

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: FEB 14 2014

Office: VERMONT SERVICE CENTER

IN RE:

APPLICATION: Application to Adjust Status (Form I-485) for an Alien in U Nonimmigrant Status Pursuant to Section 245(m)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)(1)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. The AAO is reopening your case pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i). This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center (the director), denied the Application to Adjust Status (Form I-485). The Administrative Appeals Office (AAO) dismissed the subsequent appeal and affirmed that decision on motion. The AAO reopens and reconsiders these proceedings to consider new evidence. The motion will be sustained and the matter remanded for entry of a new decision.

The applicant, who was granted U-1 nonimmigrant status, seeks to adjust his status under section 245(m)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m)(1).

Applicable Law

Section 245(m)(1) of the Act states:

The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E), unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if

--

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U); and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

The regulation at 8 C.F.R. § 245.24(b) provides, in pertinent part:

Eligibility of U Nonimmigrants. Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

(1) Applies for such adjustment;

(2)(i) Was lawfully admitted to the United States as either a U-1, U-2, U-3, U-4 or U-5 nonimmigrant, as defined in 8 CFR 214.1(a)(2), and

(ii) Continues to hold such status at the time of application; or accrued at least 4 years in U interim relief status and files a complete adjustment application within 120 days of the date of approval of the Form I-918, Petition for U Nonimmigrant Status[.]

Regarding the duration of U nonimmigrant status, section 214(p)(6), 8 U.S.C. § 1184(p)(6) states, in pertinent part:

The authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity . . . that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity. The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien's nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 245(m) and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 245(m).

Facts and Procedural History

As the facts and procedural history have already been explained in the previous decisions, we will not repeat them in their entirety here, and the previous AAO decisions dated February 19, 2013, and December 4, 2013, are incorporated here by reference. The applicant was initially granted interim relief on January 17, 2006 based upon his *prima facie* eligibility for U nonimmigrant status prior to the publication of the U nonimmigrant visa interim rule. On March 9, 2010, the director granted U-1 nonimmigrant status to the applicant, valid from January 17, 2006 until March 8, 2011, based upon his approved Petition for U Nonimmigrant Status (Form I-918). The applicant filed the instant Form I-485 on March 21, 2011, 13 days after the expiration date of his U-1 nonimmigrant status. The director denied the applicant's adjustment of status application because he did not continue to hold U-1 nonimmigrant status at the time he filed his Form I-485. The AAO dismissed the appeal because the applicant did not demonstrate that his failure to file his Form I-485 prior to the expiration of his U-1 nonimmigrant status was due to ineffective assistance of his first counsel, and the regulation at 8 C.F.R. § 245.24(b)(2)(ii) barred the approval of his application.

The applicant then filed a motion to reopen. The motion to reopen was granted as counsel submitted evidence showing that prior counsel was ineffective under the standards and requirements set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). The motion to reopen was ultimately dismissed because U.S. Citizenship and Immigration Services (USCIS) records did not reflect that a Form I-539 was pending or that any such application had been approved. However, subsequent to our dismissal of the applicant's motion, the AAO received correspondence dated September 16, 2013, that included evidence that the applicant did have an approved Form I-539, Application to Extend Nonimmigrant Status. As such, we reopen these proceedings on Service motion pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i).

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As the applicant's U-1 status was extended from March 9, 2011, the day after his initial period in U-1 nonimmigrant status expired, until July 30, 2014, he continued to hold U-1 status at the time he filed her Form I-485 on March 21, 2011. Accordingly, the applicant has satisfied the regulation at 8 C.F.R. § 245.24(b)(2)(ii) and the director's decision is withdrawn.

Although the applicant has overcome the stated basis for the denial of the Form I-485, the AAO remands the matter to the director to determine whether the applicant has demonstrated his eligibility to adjust status under section 245(m)(1) of the Act as explicated at 8 C.F.R. § 245.24. As always, in these proceedings the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b),(d).

ORDER: The December 4, 2013, decision of the Administrative Appeals Office is withdrawn. The proceedings are reopened, and the matter remanded to the director for issuance of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.