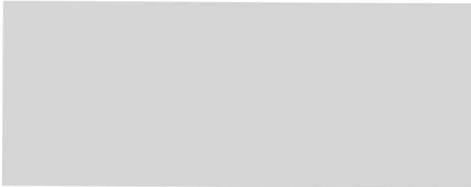


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 01 2015

Office: VERMONT SERVICE CENTER

FILE: 

IN RE:

Applicant: 

APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law or establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the Application to Register Permanent Residence or Adjust Status (Form I-485), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

The applicant, who was granted U-1 nonimmigrant status, seeks to adjust his status under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The director denied the application because the applicant did not have the required continuous physical presence in the United States.

Applicable Law

Section 245(m) of the Act states, in pertinent part:

(1) 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.

(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

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

(a) *Definitions.* As used in this section, the term:

(1) *Continuous Physical Presence* means the period of time that the alien has been physically present in the United States and must be a continuous period of at least 3 years

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since the date of admission as a U nonimmigrant continuing through the date of the conclusion of adjudication of the application for adjustment of status. If the alien has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant must include a certification from the agency that signed the Form I-918, Supplement B, in support of the alien's U nonimmigrant status that the absences were necessary to assist in the criminal investigation or prosecution or were otherwise justified.

* * *

(b) *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:

* * *

(3) Has continuous physical presence for 3 years as defined in paragraph (a)(1) of this section[.]

* * *

(d) *Application Procedures for U nonimmigrants.* Each U nonimmigrant who is requesting adjustment of status must submit:

* * *

(9) Evidence, including an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years as defined in paragraph (a)(1) of this section. Applicants should submit evidence described in 8 CFR 245.22. A signed statement from the applicant attesting to continuous physical presence alone will not be sufficient to establish this eligibility requirement[.]

* * *

Facts and Procedural History

The applicant is a native and citizen of Mexico. On September 30, 2009, the director approved the applicant's Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition). However, the applicant was not admitted to the United States in U-1 status until December 3, 2010. He then filed the instant Form I-485 on August 15, 2013. The director denied the applicant's adjustment of status application because the applicant had not been continuously physically present in the United States for three years since the date of his admission as a U-1 nonimmigrant.

On appeal, the applicant asserts that a lawyer advised him to apply early for adjustment of status in order to avoid delays. He also indicates that he can establish three years of continuous physical presence in the United States through bank statements, educational and employment records, and affidavits. The applicant also contends that pursuant to 8 C.F.R. § 245.24(e)(1), he can demonstrate physical presence by submitting a newly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B).¹

Analysis

We conduct appellate review on a *de novo* basis. The relevant evidence submitted below and on appeal fails to establish that the applicant is eligible for adjustment of status. The appeal will be dismissed.

An applicant for adjustment of status must demonstrate three years of continuous physical presence “since the date of admission as a U nonimmigrant continuing through the date of the conclusion of adjudication of the application for adjustment of status.” 8 C.F.R. § 245.24(a)(1) (defining continuous physical presence); *see also* 8 C.F.R. § 245.24(d) (stating that a U nonimmigrant who applies for adjustment of status must submit evidence of three years of continuous physical presence). The applicant must establish eligibility for adjustment of status at the time of filing his application. 8 C.F.R. § 103.2(b)(1).

The record demonstrates that the applicant had not been continuously present in the United States for three years at the time he filed his adjustment of status application. The applicant was admitted to the United States in U-1 status on December 3, 2010, but he filed his Form I-485 on August 15, 2013. Therefore, by the time he applied for adjustment of status, the applicant had accrued two years, eight months, and twelve days of physical presence in the United States. On appeal, the applicant does not contest the fact that his continuous physical presence began to accrue on December 3, 2010. The applicant is unable to establish his eligibility for adjustment of status at the time of filing his application. Accordingly, the appeal will be dismissed.

Conclusion

In these proceedings, the applicant bears the burden of proving his eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*,

¹ The applicant has submitted bank records but none of the other documentation he mentioned. Although he indicated on his Form I-290B that he would submit a brief or additional evidence within 30 days, we have not received any additional submissions as of the date of this decision. However, even if the applicant had submitted these documents, he has not asserted that they would establish that his continuous physical presence began to accrue at least three years before he filed his Form I-485 on August 15, 2013.

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26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The application remains denied.