

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 17 2015**

FILE #: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, who was granted U-1 nonimmigrant status, seeks to adjust her 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 was not in U nonimmigrant status at the time she filed her Application to Register Permanent Residence or Adjust Status (Form I-485).

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.

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

(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:

(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;

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

(4) Is not inadmissible under section 212(a)(3)(E) of the Act;

(5) Has not unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status, as determined by the Attorney General, based on affirmative evidence; and

(6) Establishes to the satisfaction of the Secretary that the alien's presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest.

(c) *Exception.* An alien is not eligible for adjustment of status under paragraph (b) of this section if the alien's U nonimmigrant status has been revoked pursuant to 8 CFR § 214.14(h).

Regarding the duration of U nonimmigrant status, section 214(p)(6) of the Act, 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

On April 19, 2010, the director granted U-1 nonimmigrant status to the applicant based upon an approved Form I-918, Petition for U Nonimmigrant Status. The applicant's U nonimmigrant status was valid until April 18, 2014. She filed the instant Form I-485 on April 19, 2014, after her U nonimmigrant status had expired. The director denied the

application because the applicant was not in U nonimmigrant status at the time she filed her Form I-485.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, we find no error in the director's decision to deny the applicant's adjustment of status application.

An applicant is eligible to adjust status under section 245(m)(1) of the Act if he or she, in part, "[c]ontinues to hold such status at the time of application." 8 C.F.R. § 245.24(b)(2)(ii). The record reflects that the applicant filed her Form I-485 after her U-1 nonimmigrant status had expired on April 18, 2014.

On appeal, the applicant asserts that she failed to file her Form I-485 prior to the expiration of her U nonimmigrant status because she was seriously injured in a car accident shortly before the deadline. She states that her physical pain and emotional trauma following the accident prevented her from filing her Form I-485 before her U status expired.

The record contains medical documentation indicating that the applicant was involved in a car accident on November 14, 2012. Records indicate that she received medical and chiropractic care for neck, arm, and shoulder pain until December 11, 2013. Other documentation shows that she was treated for a wrist injury on November 23, 2010, and a kidney stone on May 6, 2013.

The applicant has not explained why her car accident on November 14, 2012, and the related medical care she received until December 11, 2013, prevented her from filing her Form I-485 before the expiration of her U nonimmigrant status on April 18, 2014. Although she stated in her Form I-290B that she would file additional evidence within 30 days, we have not received any supplemental filings as of the date of this decision. Additionally, to request an extension of U nonimmigrant status based on exceptional circumstances that caused a delay in filing, the applicant should file a Form I-539, Application to Extend/Change Nonimmigrant Status, with USCIS.¹ There is no evidence that the applicant has filed a Form I-539. Therefore, the applicant is not eligible to adjust status because she was no longer in U nonimmigrant status when she filed her Form I-485. 8 C.F.R. § 245.24(b)(2)(ii). The appeal will be dismissed.

This decision is without prejudice to the filing of a new Form I-485 should the applicant's U-1 nonimmigrant status be extended through the approval of a Form I-539.

Conclusion

In these proceedings, the applicant bears the burden of proving her eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec.

¹ See *Extension of Status for T and U Nonimmigrants; Revisions to Adjudicator's Field Manual (AFM) Chapter 39.1(g)(3) and Chapter 39.2(g)(3) (AFM Update AD11-28)*, USCIS PM-602-0032.1, April 19, 2011.

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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.