



U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

APR 22 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)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)(1)

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 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 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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The applicant, who was granted U-1 nonimmigrant status, seeks to adjust her 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 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 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:

(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).

Facts and Procedural History

On May 20, 2009, the director approved the applicant's Petition for U Nonimmigrant Status (Form I-918 U petition). The applicant's U-1 status was valid from May 20, 2009, until May 19, 2013. On July 22, 2011, the applicant departed the United States and reentered on February 17, 2012. The applicant filed the instant Form I-485 on December 31, 2012. On August 23, 2013, the director issued a Request for Evidence (RFE) that the applicant's absence from the United States was necessary to assist in the criminal investigation or prosecution or was otherwise justified. In addition, the director requested a completed Biographic Information sheet (G-325A). The applicant responded to the RFE with additional evidence, which the director found insufficient, and on January 30, 2014, the director denied the application because the applicant did not establish that she had three years of continuous physical presence in the United States since the date of admission as a U nonimmigrant. The applicant timely appealed the denial of her Form I-485.

On appeal, the applicant claims that her departure from the United States in excess of 90 days was “justified” because her daughter was in danger in Mexico. She explains that although her daughter had an approved Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A), her daughter did not have a passport and it took over 90 days for her passport waiver form to be approved. In support of her claim, the applicant submits a statement and copies of documents already included in the record.

In response to the RFE, the applicant submitted a letter from Ms. [REDACTED], Victim Witness Director of the [REDACTED] California, District Attorney’s Office,¹ indicating that the applicant’s travel to Mexico “was not at [their] request but it was an emergency related to the safety of [the applicant’s] daughter.” Under 8 C.F.R. § 245.24(a)(1), an applicant who has departed the United States for any single period in excess of 90 days must provide a certification, from the certifying agency that signed the Form I-918 Supplement B, that the applicant’s absence was “necessary to assist in the criminal investigation or prosecution or [was] otherwise justified.” Ms. [REDACTED] states that “[i]n the spirit of advocacy for those crime victims that were cooperative, [they] understand from the victim that her travel was *otherwise justified*.” (emphasis added). As the applicant has provided a letter from the certifying agency that her absence from the United States in excess of 90 days was justified, this portion of the director’s decision will be withdrawn.

However, the applicant requires a new, updated Report of Medical Examination and Vaccination Record (Form I-693) and updated fingerprints. Therefore, we withdraw the director’s decision and remand the matter to the director for further action and issuance of a new decision.

ORDER: The director’s January 30, 2014, decision is withdrawn. The matter is returned to the director for issuance of a new decision on the Form I-485, which if adverse to the applicant shall be certified to the Administrative Appeals Office for review.

¹ We note that the [REDACTED] California, District Attorney’s Office is the certifying agency that signed the Form I-918 Supplement B.