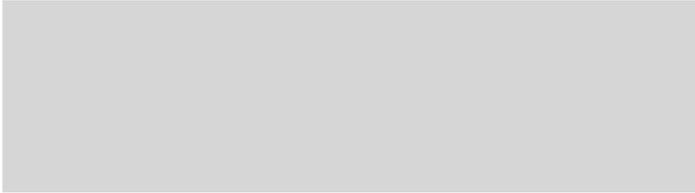


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



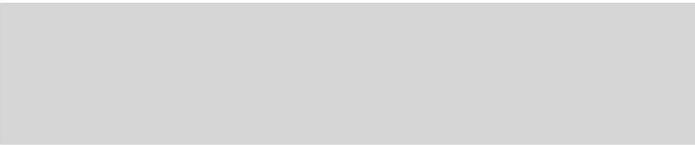
DATE: **JUN 16 2015**

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,

f Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 Form I-485, Application to Register Permanent Residence or Adjust Status, based on a finding that the applicant was not in U nonimmigrant status at the time she filed her 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 June 10, 2009, 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-1 status was valid until Sunday, June 9, 2013. She initially submitted a Form I-485 to U.S. Citizenship and Immigration Services (USCIS) on Monday, June 10, 2013. In a notice dated June 13, 2013, the director rejected the

Form I-485 because it was not accompanied by the proper filing fee. The applicant refiled her Form I-485 on June 21, 2013. The director issued a Form I-797C, Notice of Action, on August 5, 2013, indicating that the applicant's U nonimmigrant status had been extended pending adjudication of her Form I-485, with a priority date of June 26, 2013. The director then denied the applicant's Form I-485 because she was not in U nonimmigrant status at the time she filed it.

Analysis

We conduct appellate review on a *de novo* basis. The director did not err in finding that the applicant was not in U nonimmigrant status at the time she filed her Form I-485.

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 regulation at 8 C.F.R. § 1.2 provides the following definition of the term “day”:

Day, when computing the period of time for taking any action . . . shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period computed falls on a Saturday, Sunday, or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

An application which is submitted without the proper filing fee will be rejected. 8 C.F.R. § 103.2(a)(7)(i). A rejected application will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(iii).

The record reflects that the applicant's U-1 nonimmigrant status expired on Sunday, June 9, 2013. The applicant correctly notes on appeal that her first Form I-485, which arrived at the Vermont Service Center on the following Monday, June 10, 2013, would have been considered timely pursuant to 8 C.F.R. § 1.2 if properly filed on that day. However, her Form I-485 was rejected because it was not accompanied by the correct filing fee. Therefore, her rejected filing did not retain a filing date, and cannot be considered properly filed on June 10, 2013.

The applicant states on appeal that she did not submit a fee with the filing because “the Form I-485 Supplement E instructions [indicate] that a ‘U’ visa was exempt the usual filing fee.” The instructions for the Supplement E, however, do not contain any information regarding fees and the Form I-485 instructions indicate that refugees are the only fee exempt applicants. The applicant appears to be referring to the USCIS webpage for the Supplement E which indicates that there is no fee to file the I-485 Supplement E.¹

The applicant additionally argues that the Form I-797C issued by USCIS upon acceptance of the Form I-485 filing confirms that the applicant remained in U nonimmigrant status. The Form I-797C, however, is a notice issued by USCIS to document receipt of a filing. It does not extend the applicant's status. *See, e.g.*, 8 C.F.R. § 214.14(g) (discussing the duration of U nonimmigrant status

¹ Certain I-485 Supplements do require a fee for filing; for instance, the Supplement A requires a \$1000 fee in addition to the fee for filing the Form I-485.

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and indicating that it may not exceed four years in the aggregate). The record shows that the applicant's only properly filed Form I-485 retained a filing date of June 21, 2013, after the expiration of her U nonimmigrant status. Therefore, the applicant was not in U nonimmigrant status when she filed her Form I-485, and the regulation at 8 C.F.R. § 245.24(b)(2)(ii) bars the approval of her application. Consequently, the director did not err in denying the applicant's adjustment of status application.

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; *Matter of Otiende*, 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.