



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 11 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)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)(1)

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

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,

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 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 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 October 1, 2010, 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 October 1, 2010, until September 30, 2014. On January 11, 2012, the applicant departed the United States and reentered on February 13, 2012. On March 14, 2012, the applicant departed the United States and reentered on November 17, 2012. The applicant filed the instant Application to Register Permanent Residence or Adjust Status (Form I-485) on October 3, 2013. On November 24, 2014, the director denied the application because the applicant did not establish that he 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 his 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.

The director denied the applicant's adjustment of status application because the applicant spent in excess of 180 aggregate days outside the United States after being granted U-1 nonimmigrant status, and he admitted that his absence from the United States was for personal reasons and had not submitted any

evidence from the certifying agency that his travel was necessary to assist in the criminal investigation or prosecution of the crime of which he was a victim, or was otherwise justified.

On appeal, the applicant claims that his departure from the United States in excess of 180 aggregate days was related to a medical emergency. He explains that he went to Bangladesh in March 2012, to bring his wife to the United States but while he was there, he “got sick” and “could not travel.” He states that on August 25, 2012, when he woke up, his legs were paralyzed and his doctor in Bangladesh placed him on bed rest until November 1, 2012. In a medical certificate, Dr. [REDACTED], a doctor in Bangladesh, claims that the applicant was under his care from June 3, 2012, when the applicant “felt both legs paralyzed and could not move from bed,” until November 2, 2012, when Dr. [REDACTED] released the applicant from bed rest.

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 or for any periods in the aggregate exceeding 180 days must provide a certification, from the certifying agency that signed the U Nonimmigrant Status Certification (Form I-918 Supplement B), that the applicant’s absence was “necessary to assist in the criminal investigation or prosecution or [was] otherwise justified.” On appeal, the applicant submitted a letter from Detective [REDACTED] Police Department,¹ dated January 31, 2013. Detective [REDACTED] described the crime committed against the applicant and indicated that the applicant had been fully cooperative with the investigation but he did not comment on the applicant’s absence from the United States such that this letter constitutes evidence that the applicant’s trip to Bangladesh was necessary to assist in the criminal investigation or prosecution of the qualifying criminal activity of which the petitioner was a victim, or was otherwise justified. Therefore, the applicant did not establish that he had three years of continuous physical presence in the United States since the date of admission as a U nonimmigrant, and his application must remain denied.

Conclusion

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). Here, that burden has not been met as to the applicant’s eligibility to adjust status under section 245(m)(1) of the Act and the appeal shall be dismissed.

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

¹ We note that the [REDACTED] Police Department is the certifying agency that signed the Form I-918 Supplement B.