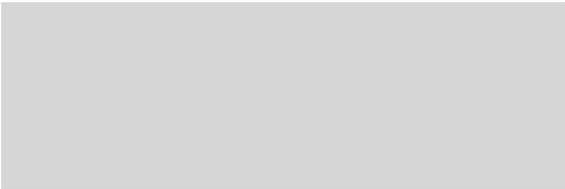


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 15 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:
[REDACTED]

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) 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, because the applicant was not in U nonimmigrant status at the time he filed his 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 March 9, 2010, the director granted U-1 nonimmigrant status to the applicant based upon an approved Form I-918. The applicant's U-1 status was valid until March 8, 2014. He filed the instant Form I-485 on March 14, 2014, after his U nonimmigrant status had expired. The director denied the application because the applicant was not in U nonimmigrant status at the time he filed his Form I-485.

Analysis

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, the director did not err in denying 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 his Form I-485 after his U-1 nonimmigrant status had expired on March 8, 2014.

On appeal, the applicant states that he failed to file his Form I-485 before the expiration of his U nonimmigrant status because of an error on the part of his prior attorney. He claims that he began asking his prior attorney for advice regarding the filing of his Form I-485 a year and a half prior to the expiration of his U nonimmigrant status, but his attorney and staff at the attorney's office repeatedly told him to wait until one month before the deadline. He asserts that in January 2014, his attorney told him that his file had been lost. The applicant states that he then hired a new attorney, but was unable to acquire copies of the paperwork relating to his U nonimmigrant status, which were necessary for filing his form I-485, until March 10, 2014. Although the applicant alleges that his failure to file his Form I-485 while in U nonimmigrant status was due to an error on the part of his former attorney, he has not complied with the procedural requirements as set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), for making an ineffective assistance of counsel claim. Therefore, the applicant is not eligible to adjust status because he was no longer in U nonimmigrant status when he filed his Form I-485. 8 C.F.R. § 245.24(b)(2)(ii).

The applicant also refers to a Form I-539, Application to Extend/Change Nonimmigrant Status, that he filed on October 6, 2014, and argues that if his Form I-539 is approved he will become eligible for adjustment of status. The applicant concedes that he filed his Form I-485 after his U nonimmigrant status had expired and he does not assert that he is eligible for adjustment of status absent approval of his Form I-539. We have no authority to grant the applicant's adjustment of status application based on an unadjudicated Form I-539.

Conclusion

In these proceedings, the applicant bears the burden of proving his 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. 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.