



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF D-M-P-

DATE: SEPT. 11, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE
OR ADJUST STATUS

The Applicant, who was granted U-4 nonimmigrant status, seeks to adjust her status. *See* Immigration and Nationality Act (the Act) § 245(m)(1); 8 U.S.C. § 1255(m)(1). The Director, Vermont Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

I. 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.
- (2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

* * *

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[.]

* * *

(d) *Application Procedures for U nonimmigrants.* Each U nonimmigrant who is requesting adjustment of status must submit:

* * *

(5) A photocopy of all pages of all of the applicant's passports valid during the required period (or equivalent travel document or valid explanation of why the applicant does not have a passport). . .

* * *

(9) Evidence, including an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years as defined in paragraph (a)(1) of this section. Applicants should submit evidence described in 8 CFR 245.22. A signed statement from the applicant attesting to continuous physical presence alone will not be sufficient to establish this eligibility requirement[.]

* * *

II. FACTS AND PROCEDURAL HISTORY

The Applicant is a native and citizen of Guatemala who claims to have last entered the United States in July 2002, without inspection, admission, or parole. The Applicant's daughter filed a Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, on her behalf on August 3, 2009. The Applicant was granted U-4 nonimmigrant status on March 19, 2010. Her U-4 status was valid from March 19, 2010, until March 18, 2014. The Applicant filed the instant Form I-485 on March 24, 2014. The Director issued a request for evidence (RFE) on September 15, 2014, that the Applicant had been physically present in the United States for at least three years since her admission as a U nonimmigrant, and also requesting a self-affidavit confirming the Applicant had maintained continuous physical presence and a photocopy of all pages of the Applicant's passport. The Applicant responded with additional evidence of her continuous physical presence, which the Director found insufficient and denied the application accordingly.

The Applicant filed a timely appeal. On appeal, the Applicant contends that the Director's decision denying her application was an abuse of discretion because the applicant satisfied nine of the eleven requirements listed in the regulations.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon review, we affirm the Director's decision to deny the application based on the stated grounds.

An applicant for adjustment of status must demonstrate three years of continuous physical presence "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." 8 C.F.R. § 245.24(a)(1) (defining continuous physical presence); *see also* 8 C.F.R. § 245.24(d) (stating that a U nonimmigrant who applies for adjustment of status must submit evidence of three years of continuous physical presence). In addition, the regulations require that the Applicant submit "an affidavit from the applicant, that ... she has continuous physical presence for at least 3 years. . . ." 8 C.F.R. § 245.24(d)(9). The regulations also require that the Applicant submit a photocopy of all the pages of her passports valid during the required period, or an explanation of why she does not have a passport. 8 C.F.R. § 245.24(d)(5).

The record demonstrates that the Applicant has not submitted the required evidence necessary for adjustment – namely an affidavit confirming her continued physical presence and photocopies of her passport(s). On appeal, the Applicant contends that she has submitted evidence of some of the

requirements, and that should suffice. However, the Applicant must meet *all* of the requirements listed in the regulations in order to adjust her status, and we lack authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). The Applicant also submits a letter from her counsel's paralegal indicating that the Applicant does not have a passport because she has not left the country since she received U nonimmigrant status. However, the Applicant previously submitted a photocopy of one page of her passport that was valid while she was in U nonimmigrant status. As such, the Applicant has not complied with the regulations at 8 C.F.R. § 245.24(d) regarding the submission of required evidence, and her Application must be denied.

IV. CONCLUSION

In these proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b), (d); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met as to the Applicant's eligibility to adjust status under section 245(m)(1) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of D-M-P-*, ID#13309 (AAO Sept. 11, 2015)