



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

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

MATTER OF C-V-C-C-

DATE: FEB. 10, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Applicant seeks to become a lawful permanent resident based on her U-3 nonimmigrant status, which has now expired. *See* Immigration and Nationality Act (the Act) § 245(m), 8 U.S.C. § 1255(m). 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)(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

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(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;

. . .; 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).

## II. FACTS AND PROCEDURAL HISTORY

On December 1, 2009, the Director approved the Applicant's Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, filed on her behalf by her mother. The Form I-797, Approval Notice, issued to the Applicant's mother provided the period of the Applicant's U-3 nonimmigrant status as December 1, 2009 through September 13, 2013. The Applicant was not in the United States at the time the Form I-918 Supplement A was approved, and the Applicant was subsequently admitted to the United States on January 18, 2011 as a U-3 nonimmigrant.

The Applicant attempted to file a Form I-485, Application to Register Permanent Residence or Adjust Status, on September 13, 2013 and again on September 20, 2013. Both applications were ultimately rejected and not given a receipt date because the Applicant had not, by either of those dates, acquired three years of continuous physical presence in the United States. *See* section 245(m)(1)(A) of the Act (specifying that eligibility for lawful permanent residency requires, in part, physical presence in the United States for a continuous period of at least three years "since the date of admission as a nonimmigrant under . . . section 101(a)(15)(U) [of the Act]").

The Applicant attempted to file her Form I-485 for a third time, and U.S. Citizenship and Immigration Services (USCIS) recorded its receipt date as November 20, 2014. *See* 8 C.F.R. § 103.2(a)(7)(i). The Director denied the Form I-485 because the Applicant was not in U nonimmigrant status at the time of its receipt date. On appeal, the Applicant submits a brief and previously proffered evidence.

### III. ANALYSIS

An applicant who has been granted U nonimmigrant status and seeks lawful permanent residency under section 245(m) of the Act must “[c]ontinue[] to hold such status at the time of application.” 8 C.F.R. § 245.24(b)(2)(ii). Here, the record reflects that USCIS received the Applicant’s Form I-485 on November 20, 2014, after her U-3 nonimmigrant status had expired on September 13, 2013. The record does not indicate that the Applicant ever filed for an extension of her U nonimmigrant status and she therefore was not in U nonimmigrant status when she filed her Form I-485.

On appeal, the Applicant contends that she and her mother, the principal U-1 nonimmigrant, concurrently and timely filed their Forms I-485 in September 2013 while the Applicant was still in U nonimmigrant status. She asserts that USCIS granted her mother’s Form I-485, but inexplicably rejected her Form I-485 in error, although both of their U nonimmigrant statuses expired the same day. The Applicant maintains that there was no basis for the rejection of her Form I-485 and requests its approval to reverse USCIS’ error.

Upon our *de novo* review, the record does not establish the Applicant’s eligibility. Although the Applicant attempted to file her Form I-485 prior to the expiration of her U nonimmigrant status, she was not eligible for lawful permanent residency at that time because she did not have the requisite three years of continuous physical presence since her January 18, 2011 admission to the United States. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(b)(3). Although the Applicant was eligible to seek an extension of her U nonimmigrant status until such time she acquired the requisite period of continuous physical presence, there is no evidence that she filed such a request. Consequently, although the Applicant had the required years of physical presence in the United States as of November 20, 2014, the filing date of her Form I-485, she was not in U nonimmigrant status on that same date. She therefore has not established her eligibility for lawful permanent residency under section 245(m) of the Act.

### IV. 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, the Applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-V-C-C-*, ID# 16113 (AAO Feb. 10, 2016)