



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

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

MATTER OF L-E-C-P-

DATE: OCT. 23, 2019

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 his derivative “U” nonimmigrant status as the child of a victim of qualifying criminal activity under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), concluding that the Applicant did not establish that he continued to hold U status at the time of filing his U adjustment application, as required. On appeal, the Applicant submits additional evidence and a brief and reasserts his eligibility. Upon *de novo* review, we will sustain the appeal.

I. LAW

To be eligible for adjustment of status as a U nonimmigrant, the applicant must establish, among other requirements, that he or she was lawfully admitted as a U nonimmigrant and continues to hold such status at the time of application. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(b)(2). An applicant must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

II. ANALYSIS

The Applicant, a native and citizen of Guatemala, was granted U-3 status as the child of a U-1 nonimmigrant on March 6, 2014. On December 15, 2014, he was admitted to the United States on a U-3 visa, with the validity of the visa lasting until March 15, 2018. The Applicant filed the instant U adjustment application on May 17, 2018. The Director determined that the Applicant did not establish that he continued to hold U status at the time of filing, because his U-3 status had expired.

On appeal, the Applicant states that he filed a Form I-539, Application to Extend/Change Nonimmigrant Status (extension application). The Applicant’s administrative record shows that subsequent to the filing of his appeal, U.S. Citizenship and Immigration Services (USCIS) approved the extension application, affording him additional time in U-3 status retroactively, from March 16, 2018, until July 16, 2020. As such, the record before us on appeal shows that the Applicant held U-3 status on May 17, 2018, when he filed his U adjustment application.

The Applicant additionally claims on appeal that USCIS should honor the filing date of his previous U adjustment application, March 5, 2018. The record shows that USCIS rejected the application on April 2, 2018, due to the bank's failure to honor his payment. The Applicant asserts that the undue delay in rejecting the application caused him prejudice, that honoring the date of a rejected filing fits within USCIS guidelines, and that until recently, USCIS provided applicants with the opportunity to rectify a payment issue within fourteen days. The Applicant also provides evidence of financial difficulties that he encountered due to medical debt. As the Applicant has demonstrated that he held U-3 status at the time of filing his U adjustment application, we do not address these issues on appeal.

III. CONCLUSION

The Applicant has demonstrated that he held U-3 status at the time of filing his U adjustment application. Accordingly, the record establishes the Applicant's eligibility to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is sustained.

Cite as *Matter of L-E-C-P-*, ID# 5166580 (AAO Oct. 23, 2019)