U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11853918

Date: MAR. 26, 2021

Appeal of Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status

The Applicant seeks to become a lawful permanent resident based on his "U" nonimmigrant status as a qualifying family member 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 for Adjustment of Status of Alien in U Nonimmigrant Status (U adjustment application), as well as the Applicant's subsequent motion to reopen and reconsider, and the matter is now before us on appeal. Upon *de novo* review, we will remand the matter to the Director.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of lawful permanent resident if the applicant establishes, among other requirements, that he or she was admitted to the United States as a U nonimmigrant. Section 245(m)(1) of the Act; 8 C.F.R. § 245.24(b)(2)(i). The applicant must also demonstrate that he or she continues to hold such status at the time of application for adjustment of status. 8 C.F.R. § 245.24(b)(2)(ii). The applicant bears the burden of establishing their eligibility, section 291 of the Act, 8 U.S.C. § 1361, and must do so by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

The Applicant is a citizen of Peru. The Applicant's mother filed a Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (derivative U petition) on his behalf, and USCIS approved the petition, granting him U-3 nonimmigrant status from September 15, 2014, until September 14, 2018. The Applicant was in Peru at the time his derivative U petition was approved, and he subsequently obtained a U-3 visa through consular processing with the U.S. Department of State (DOS), with validity from November 25, 2014, until September 13, 2018. The Applicant entered the United States on March 19, 2015, and U.S. Customs and Border Protection (CBP) admitted him in U-3 status until March 5, 2016, as evinced by his Form I-94, Arrival/Departure Record and entry stamp.

The Applicant filed his U adjustment application on May 21, 2018. The Director denied the application, determining that the Applicant was no longer in U nonimmigrant status at the time of filing, as required, because CBP only granted him a length of stay until March 5, 2016.

On appeal, the Applicant first claims that USCIS' decision to afford him an employment authorization document until September 14, 2018, recognized that his U-3 nonimmigrant status was valid until that date, and that the Director erred in later determining, for purposes of his U adjustment application, that the CBP admission date was the controlling date. Although we acknowledge this claim, we find no error in the Director's determination, as a derivative family member only receives U nonimmigrant status concurrently with approval of his U petition if he is in the United States at the time of approval. 8 C.F.R. § 214.14(f)(6)(i) ("When USCIS approves a Form I-918, Supplement A for a qualifying family member who is within the United States, it will concurrently grant that alien [U] . . . nonimmigrant status."). For such derivative family members already in the United States, "a Form I-94, Arrival-Departure Record, indicating U nonimmigrant status will be attached to the approval notice and will constitute evidence that the petitioner has been granted U nonimmigrant status." Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53028 (Sept. 17, 2007). By contrast, a derivative family member who is outside of the United States at the time his U petition is approved does not obtain U nonimmigrant status until his entry and admission into the United States on a U visa. 8 C.F.R. § 214.14(f)(6)(ii) ("When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval . . . [and] forward the approved [petition] to the [DOS] . . . ."). Subsequently, the derivative family member "should file for a U nonimmigrant visa with the designated U.S. Embassy or Consulate or port of entry. If granted, the visa can be used to travel to the United States for admission as a U nonimmigrant." 72 Fed. Reg. 53014. The period of authorized stay is determined by "the U nonimmigrant's Form I-94 issued to evidence status." *Id.* at 53028. Here, as the Applicant's entry stamp and Form I-94 provided that his U-3 status was only authorized until March 5, 2016, we find no error in the Director's determination that the Applicant had not demonstrated that he held U nonimmigrant status at the time of filing his U adjustment application on May 21, 2018, as required.

Notwithstanding this determination, on appeal, the Applicant submits a copy of an updated U-3 entry stamp from his passport, containing a notation from CBP that the expiration of his period of stay in U-3 nonimmigrant status was "corrected" and extending his initial period of stay until September 14, 2018. The Applicant additionally provides a copy of an electronic printout from CBP entitled "Most Recent I-94," stating that his most recent date of entry was March 19, 2015, with a U-3 class of admission, and that the "Admit Until Date" is September 14, 2018. The Applicant claims that CBP corrected its error *nunc pro tunc*, and that the record now establishes that he was in U-3 nonimmigrant status when he filed his U adjustment application in May 2018. The Applicant further maintains that he submitted this evidence to the Director with his motion to reopen and reconsider the denial of his U adjustment application, but that the Director failed to consider this evidence.

The record reflects that in denying the motion to reopen and reconsider, the Director concluded that CBP had authorized the Applicant's stay until March 5, 2016. The Director's decision does not mention the corrected U-3 entry stamp or Form I-94, and the Director does not appear to have considered this evidence. Upon *de novo* review, the record shows that the Applicant has provided

evidence that is relevant to the determination as to whether the Applicant held U-3 nonimmigrant status at the time of filing his U adjustment application. As such, we will remand the matter to the Director to consider this evidence, as well as to determine whether the Applicant has satisfied the remaining eligibility requirements to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded to the Director for issuance of a new decision consistent with the foregoing analysis.