U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19716638

Date: JAN. 11, 2022

Appeal of Vermont Service Center 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 her derivative "U" nonimmigrant status 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), and the matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence and reasserts her eligibility. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To be eligible for adjustment of status as a U nonimmigrant, the applicant must demonstrate, among other eligibility criteria, that he or she was lawfully admitted to the United States as a U nonimmigrant and continues to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i), (ii). An applicant must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010).

II. ANALYSIS

The Applicant is a citizen of Guatemala. The Applicant's mother filed a derivative U petition on her behalf, and U.S. Citizenship and Immigration Services (USCIS) approved her derivative U-3 nonimmigrant status from January 17, 2017, to January 16, 2021. The Applicant was in Guatemala at the time her U petition was approved, and she subsequently obtained a U visa through consular processing with the U.S. Department of State (DOS). DOS issued the Applicant's visa on August 18, 2017, with an expiration date of January 16, 2021. The Applicant first entered the United States on August 27, 2017, and U.S. Customs and Border Protection admitted her in U status until December 12, 2018.

The Applicant filed her U adjustment application on June 8, 2020, and the Director denied the application because the Applicant was no longer in U nonimmigrant status on the filing date. Based on the evidence in the record, as supplemented on appeal, we find no error in the Director's decision to deny the U adjustment application.

On appeal, the Applicant asserts that she relied on the USCIS approval notice for her U petition, which granted her U status until January 16, 2021. She further states that she relied on an approved Form I-765, Application for Employment Authorization, which was based on her U-3 status and was valid until January 16, 2021, as confirmation of the validity period of her U nonimmigrant status. However, the approval notice for the U petition specified that "[t]he approval of this petition does not grant any immigration status and does not guarantee your derivative family member will be found eligible for a visa . . . ." A derivative family member only receives U nonimmigrant status concurrently with approval of her U petition if she 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 her U petition is approved does not obtain U status until her 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." *Id.* at 53014. The period of authorized stay is determined at the time of admission, and "as with all other nonimmigrant classifications, the U nonimmigrant's Form I-94 issued to evidence status will indicate the approved period of stay." Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53028 (Sept. 17, 2007). The Applicant's period of U nonimmigrant status was determined at the time of his admission into the United States. That status expired on December 12, 2018, prior to the filing of her U adjustment application. USCIS records indicate that the applicant has since filed for an extension of her U nonimmigrant status; however, the application has not been adjudicated. Consequently, the Applicant was not in U nonimmigrant status at the time of filing, as required under 8 C.F.R. § 245.24(b)(2)(ii).

III. CONCLUSION

The Applicant no longer held U nonimmigrant status at the time she filed her U adjustment application, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Accordingly, she was not eligible for adjustment of status to that of an LPR under section 245(m) of the Act. This decision is without prejudice to the filing of a new U adjustment application should the Applicant receive approval of an extension of her U nonimmigrant status.

ORDER: The appeal is dismissed.