



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

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

MATTER OF V-K-D-

DATE: NOV. 20, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Applicant seeks lawful permanent residency based upon his T-1 nonimmigrant status. *See* Immigration and Nationality Act (the Act) § 245(l); 8 U.S.C. § 1255(l). 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(l)(1) of the Act provides that the Secretary of Homeland Security may, at his discretion, adjust the status of an alien admitted into the United States as a T-1 nonimmigrant if such alien has been, in pertinent part, physically present in the United States for a continuous period of at least 3 years since the date of admission as a T-1 nonimmigrant.

A T-1 nonimmigrant “shall be considered to have failed to maintain continuous physical presence” in the United States under section 245(l)(1)(A) of the Act if the T-1 nonimmigrant has departed from the United States for any single period in excess of 90 days or periods in the aggregate exceeding 180 days, unless such absences are excused. *See* Section 245(l)(3) of the Act; 8 C.F.R. § 245.23(a)(3).

II. FACTS AND PROCEDURAL HISTORY

On August 30, 2010, the Director approved the Applicant’s Form I-914, Application for T Nonimmigrant Status, conferring T-1 nonimmigrant status from July 27, 2010, until July 26, 2014. The Applicant filed the instant Form I-485, Application to Register Permanent Residence or Adjust Status, on September 3, 2013. The Director subsequently issued a request for evidence (RFE) of, among other things, the Applicant’s continuous physical presence in the United States. The Applicant timely responded, but the Director denied the application on February 27, 2015, because after being lawfully admitted as a T-1 nonimmigrant, the Applicant failed to maintain continuous presence in the United States, having departed and remained outside the United States for periods in the aggregate exceeding 180 days.

On appeal, the Applicant explains that he took several trips outside the United States due to issues relating to his health as well as his family in India, and he asks that United States Citizenship and Immigration Services (USCIS) forgive these exigent circumstances.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, including the evidence submitted on appeal, the Applicant has not overcome the Director's determination that the Applicant is ineligible for lawful permanent residency under section 245(l) of the Act.

The Applicant concedes that after being accorded T-1 nonimmigrant status on July 27, 2010, he took the following five trips outside the United States, the total of which amounts to 435 days¹: February 7, 2011 to May 5, 2011 (87 days); September 4, 2011 to December 11, 2011 (98 days); April 17, 2012 to July 9, 2012 (83 days); January 22, 2013 to April 15, 2013 (83 days); and February 15, 2014 to May 10, 2014 (84 days). The Applicant requests that USCIS favorably exercise its discretion to adjust his status to that of a lawful permanent resident because the time he spent in India involved repeated medical treatment of his injured shoulder, visiting with family while his mother was sick, as well as time spent in India after his mother's death.

An applicant's single absence from the United States in excess of 90 days or periods of absence in the aggregate exceeding 180 days are not disqualifying if the absences were necessary to assist in the investigation or prosecution of the acts of trafficking that formed the basis of the applicant's T-1 eligibility, or an official involved in such investigation or prosecution certifies that the absences were otherwise justified. Section 245(l)(3) of the Act. The Applicant has neither claimed nor demonstrated that his absences were necessary to assist in investigating or prosecuting the acts of trafficking that formed the basis of his eligibility for T-1 nonimmigrant status, and he has not submitted the certification described at section 245(l)(3)(B) of the Act. Consequently, the Applicant's absences from the United States for periods in the aggregate exceeding 180 days break the continuity of his physical presence and he is ineligible to adjust status under section 245(l) of the Act on this basis alone.

We acknowledge the circumstances surrounding the Applicant's travels. Although section 245(l)(1) of the Act and the regulation at 8 C.F.R. § 245.23(e)(3) provide USCIS with discretionary authority to adjust the status of a T nonimmigrant to that of a lawful permanent resident, an applicant must first demonstrate his eligibility under the applicable statutory and regulatory criteria. Because section 245(l)(3) of the Act bars the Applicant from becoming a lawful permanent resident under section 245(l)(1) of the Act, we do not reach the issue of whether the Applicant's Form I-485 should be approved as a matter of discretion.

¹There are slight discrepancies between the dates provided by the Applicant and those reflected in his passport. For purposes of this decision, we have relied on the dates provided by the Applicant as the discrepancies are nominal and do not affect the outcome because he was outside the United States for periods in aggregate exceeding 180 days.

IV. CONCLUSION

In these proceedings, the Applicant bears the burden of proving his eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the Applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of V-K-D-*, ID# 14376 (AAO Nov. 20, 2015)