U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-P-S-P-

DATE: JULY 13, 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 his "T-1" nonimmigrant status. *See* Immigration and Nationality Act (the Act) section 245(l), 8 U.S.C. § 1255(l). The T-1 classification affords nonimmigrant status to victims of human trafficking and provides a pathway to lawful permanent residency.

The Director, Vermont Service Center, denied the Form I-485, Application to Register Permanent Residence or Adjust Status (T adjustment application). The Director concluded that the Applicant had not established his eligibility because he had not demonstrated the requisite three years of continuous physical presence in the United States from the date of his first admission as a T-1 nonimmigrant.

The matter is now before us on appeal. On appeal, the Applicant submits a brief statement.[1] The Applicant claims that his application should be approved because he has acquired the requisite three years of continuous physical presence in the United States after returning from his first trip outside the United States while in T-1 nonimmigrant status.

Upon *de novo* review, we will dismiss the appeal.

I. APPLICABLE LAW

Section 245(l) of the Act provides:

> (1) If, in the opinion of the Secretary of Homeland Security, or in the case of subparagraph (C)(i), in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate[,] a nonimmigrant admitted into the United States under section 101(a)(15)(T)(i) –

[1] Counsel of record indicated on the Form I-290B, Notice of Appeal or Motion, at part 3.1(b) that a brief and/or additional evidence would be submitted within 30 calendar days of the filing of the appeal. As of this decision, the record does not contain a brief or additional evidence from the Applicant in support of his appeal.

(A) 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 section 101(a)(15)(T)(i), or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less;[,]

. . . .

the Secretary of homeland Security, may adjust the status of the alien . . . to that of an alien lawfully admitted for permanent residence.

. . . .

(3) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days, unless –

(A) the absence was necessary to assist in the investigation or prosecution described in paragraph (1)(A); or

(B) an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

The regulation at 8 C.F.R. § 245.23 provides, in pertinent part:

(a) *Eligibility of principal T-1 applicants.* 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:

. . . .

(3) Has been physically present in the United States for a continuous period of at least 3 years since the first date of lawful admission as a T-1 nonimmigrant or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and the Attorney General has determined that the investigation or prosecution is complete, whichever period of time is less; provided that if the applicant has departed from the United States for any single period in excess of 90 days or for any periods in the aggregate exceeding 180 days, the applicant shall be considered to have failed to maintain

> continuous physical presence in the United States for purposes of section 245(l)(1)(A) of the Act[.]

II. ANALYSIS

On June 14, 2010, the Director granted the Applicant T-1 nonimmigrant status through June 13, 2014. The Applicant filed the instant T adjustment application on March 10, 2014. Upon a full review of the record, as supplemented on appeal, the Applicant has not overcome the Director's ground for denial.

An applicant who has been granted T nonimmigrant status and seeks lawful permanent residency must have "been physically present in the United States for a continuous period of at least 3 years since the date of admission" as a T nonimmigrant. *See* section 245(l)(1)(A) of the Act; *see also* 8 C.F.R. § 245.23(a)(3). The three year continuous physical presence requirement cannot be established where an applicant, after being admitted as a T-1 nonimmigrant, is absent from the United States for a single period in excess of 90 days or for multiple periods exceeding 180 days in the aggregate. *Id.* The record here indicates that the Applicant departed the United States twice after his June 2010 admission to the United States as a T-1 nonimmigrant. Specifically, the Applicant was outside the United States from December 21, 2011, through April 19, 2012, for a period of 120 days, and from October 25, 2013, until January 15, 2014, for 82 days. As the Applicant was outside the United States for a single period over 90 days and for an aggregate of 202 days total, the Director determined he did not satisfy the continuous physical presence requirement under the Act.

On appeal, the Applicant contends that he has the requisite three years of continuous physical presence beginning on April 19, 2012, when he returned from his first departure from the United States after being granted T-1 nonimmigrant status. However, as set forth in the regulation implementing section 245(l) of the Act, the Applicant must show that he has been physically present in the United States "since the *first* date of lawful admission as a T-1 nonimmigrant." 8 C.F.R. § 245.23(a)(3) (emphasis added). He, therefore, must establish three years of continuous physical presence from June 14, 2010, when he was first admitted to the United States as a T-1 nonimmigrant. As indicated, the Applicant is unable to do so because after his first admission as a T-1 nonimmigrant, he was absent from the United States for a single period in excess of 90 days and for an aggregate period exceeding 180 days total. In addition, the Applicant does not fall within the exceptions to demonstrating continuous physical presence found under subsections 245(l)(3)(A) and (B) of Act, as the Applicant has not shown that his absences from the United States were necessary to assist in the investigation or prosecution of acts of trafficking or that an official involved in the investigation or prosecution certified the Applicant's absences as otherwise justified.

The Applicant further contends on appeal that his application should be granted given the traumas in his family and his "lack of sophistication and misunderstanding about his status." We recognize that the Applicant may not have had a full understanding of the statutory and regulatory eligibility requirements for adjustment when he traveled outside the United States after being granted T-1 nonimmigrant status. However, we lack authority to waive the requirements of the statute, as

implemented by regulation. *See United States v. Nixon,* 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials).

As the Applicant has not established three years of continuous physical presence since his first admission as a T-1 nonimmigrant, he has not demonstrated his eligibility for adjustment of status under section 245(l) of the Act.

III. 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. Here, the Applicant has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of R-P-S-P-*, ID# 17088 (AAO July 13, 2016)