



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 31437822

Date: APRIL 25, 2024

Motion on Administrative Appeals Office Decision

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

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on her “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), concluding that the Applicant did not establish that she was in U status at the time of filing, as required. We summarily dismissed a subsequent appeal because it does not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. The matter is now before us on a motion to reopen and reconsider. On motion, the Applicant submits a brief and additional evidence.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *Id.* at § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if the applicant establishes, among other requirements, that they were 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 they continue to hold such status at the time of application for adjustment of status. 8 C.F.R. § 245.24(b)(2)(ii).

II. ANALYSIS

The Applicant is a citizen of India. The Applicant's spouse filed a derivative U petition on her behalf, and U.S. Citizenship and Immigration Services (USCIS) approved the petition on March 7, 2018. The Applicant was in India 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 1, 2018, with an expiration date of March 6, 2022. The Applicant first entered the United States on August 31, 2018, and U.S. Customs and Border Protection admitted her in U status until August 30, 2020.

The Applicant filed her U adjustment application in November 2021, 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 submits a March 2018 Form I-797, Notice of Action, advising her that she was granted U status until March 2022. 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 their U petition if they are 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 their U petition is approved does not obtain U status until their 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." *Id.* at 53028. The Applicant's period of U nonimmigrant status was determined at the time of her admission into the United States. That status expired on August 30, 2020, prior to the filing of her U adjustment application. Accordingly, 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), and she is therefore, ineligible for adjustment of status under section 245(m) of the Act.¹

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

¹ We note here that USCIS regulations provide for the extension of a U nonimmigrant visa by filing a Form I-539, Application to Extend/Change Nonimmigrant Status. 8 C.F.R. § 214.14(g)(2)(i). Although the Applicant filed a Form I-539 in August 2023, USCIS records indicate that as of this date, the application is still pending.