



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

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

In Re: 10793775

Date: FEB. 8, 2021

Motion on 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 derivative “U” nonimmigrant status as the child 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 to Register Permanent Residence or Adjust Status (U adjustment application) and we dismissed the Applicant’s appeal as abandoned for failing to respond to a Notice of Intent to Dismiss (NOID). On motion to reopen and reconsider, the Applicant submits additional evidence and reasserts his eligibility.

An applicant must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will grant the motion to reopen and remand the matter to the Director for the issuance of a new decision.¹

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

Section 245(m) of the Act contains the eligibility requirements for individuals seeking to adjust status to that of a lawful permanent resident (LPR) based on having been granted U status. In addition, an applicant for adjustment of status under 245(m) must comply with the general eligibility and documentary requirements to adjust status at 8 C.F.R. § 245.5, which requires that the applicant “have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record.” The instructions to Form I-693, Report of Medical Examination and Vaccination Record (medical examination), further state that the civil surgeon must provide the applicant with a completed medical examination record in a sealed envelope to submit to U.S. Citizenship and Immigration Services (USCIS), and that USCIS will return the medical examination record if it “is not in a sealed envelope or if the envelope is opened or altered in any way.”

¹ Therefore, we will not address the Applicant’s motion to reconsider.

II. ANALYSIS

The Director found that the Applicant was ineligible to adjust his status as his medical examination was not submitted in a sealed envelope provided by the civil surgeon who administered the examination. On appeal, we issued the Applicant a NOID in which he was afforded an opportunity to provide a medical examination from the civil surgeon who administered the examination in a sealed envelope that was not opened or altered in any way. We dismissed the Applicant's appeal as abandoned for failing to respond to the NOID. On motion, the Applicant submits U.S. Postal Service records showing that he timely responded to the NOID, but there was a typographical error in the mail stop part of our address. The record reflects that his response was eventually received by our office after his appeal was dismissed. His NOID response included a cover letter requesting that we accept his sealed, unopened, and unaltered medical examination. The envelope in the record states "Do Not Open, For USCIS Only" and includes the medical clinic's address stamp and the civil surgeon's initials over the seal on the envelope. As such, the record reflects that in response to the NOID, the Applicant submitted a new medical examination to us in a sealed envelope that was not opened or altered in any way.² Accordingly, we will remand this matter to the Director to consider the new medical examination in the first instance and determine whether the Applicant otherwise meets the statutory criteria for adjustment of status under section 245(m) of the Act.

ORDER: The motion to reopen is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.

² Furthermore, on motion the record reflects that the Applicant submitted another medical examination in a sealed envelope that was not opened or altered in any way.