U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35407157

Date: JAN. 6, 2025

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks lawful permanent residency based on her "T-1" nonimmigrant status as a victim of a severe form of trafficking in persons under section 245(*l*) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(*l*).

The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (T adjustment application), concluding that the record did not establish that the Applicant met the physical presence requirement. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of an individual admitted into the United States as a T-1 nonimmigrant to that of a lawful permanent (LPR) resident if, among other requirements, the applicant has been physically present in the United States for a continuous period of at least three years since "the date of 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 that, in the opinion of the Attorney General, the investigation or prosecution is complete, whichever period of time is less. Section 245(*l*)(1)(A) of the Act; 8 C.F.R. § 245.23(a)(4).

II. ANALYSIS

The Applicant, a citizen of Saint Lucia, was granted T-1 nonimmigrant status from August 2020 to August 2024. She filed her T adjustment application in November 2021. The Director denied the application because she did not meet the continuous physical presence requirement. The Director noted that the Applicant filed her T adjustment application less than three years after being granted T nonimmigrant status. Acknowledging the Applicant's argument that she had accrued three years of

continuous physical presence while her T adjustment application was pending, the Director explained that the Applicant must have met that requirement at the time of filing. Further, the Director stated that the Applicant did not submit a document signed by the Attorney General that met the criteria to apply sooner under the alternative continuous physical presence requirement. Upon de novo review, we agree with the Director.

On appeal, the Applicant contends that because more than three years have now passed since she obtained T-1 nonimmigrant status, we should exercise our discretion to determine that she meets the physical presence requirement. On appeal, she submits a statement indicating that when she filed her T adjustment application in 2021, she only had one year of continuous physical presence in T-1 nonimmigrant status, but since that time she has accrued more than three years of continuous physical presence. The record contains housing and educational records to support her claim of physical presence. However, as the Director correctly explained, applicants have the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). When the Applicant filed her T adjustment application in November 2021, she had only held T-1 nonimmigrant status for a little over one year. We lack the authority to waive the statutory and regulatory continuous physical presence requirement at section 245(*l*)(1)(A) of the Act and 8 C.F.R. § 245.23(a)(4).

The Applicant also asserts on appeal that she meets the requirements to apply sooner under the alternative continuous physical presence requirement. She contends that she previously submitted a letter signed by the Attorney General to show that she had been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that the investigation or prosecution was complete, such that she properly filed her T adjustment application before accruing three years of continuous physical presence per section 245(*l*)(1)(A) of the Act and 8 C.F.R. § 245.23(a)(4). However, the evidence does not support her claim.

In support of her T adjustment application, the Applicant submitted a letter from the U.S. Department of Justice (DOJ) Criminal Section, Civil Rights Division, Human Trafficking Prosecution Unit, stating that the Applicant reported an allegation of human trafficking to law enforcement and expressed willingness to cooperate. The letter goes on to state that "[a]fter several attempts to confirm whether law enforcement opened an investigation involving this matter, the [DOJ] has been unable to independently confirm whether law enforcement opened an investigation involving this matter, or whether any such investigation, if opened, was subsequently closed." The letter notes that the Applicant and her counsel advised the DOJ that they "believe, based on the information available to them, that any such investigation has been closed."

On appeal, the Applicant submits copies of counsel's emails to various law enforcement agencies seeking information on whether an investigation was opened and whether the Applicant can assist. In an affidavit, counsel states that she made several attempts to contact multiple federal and state law enforcement agencies. Some did not reply, while others responded that they lacked jurisdiction or did not have any record of the Applicant or her trafficking claim. Counsel emphasizes the difficulty she had obtaining information from law enforcement and that "[t]he agents who replied stated that they

were unfamiliar with the trafficking matter, suggesting that no such investigation was currently underway." Counsel concedes that it "was unclear to the [DOJ] whether law enforcement ever opened an investigation" and concludes that "it seems that no law enforcement agency actually tried to assist [the Applicant] by investigating and following up with her case after the initial incident report." She argues that by not accepting the letter from the DOJ, USCIS will impose an undue burden on the Applicant because her trafficking case was "overlooked and never fairly investigated . . . ."

As additional supporting evidence, the Applicant submits a written transcript of her interview with the [redacted] Louisiana Police Department while she was in the hospital in [redacted] 2018. The transcript shows the Applicant told the [redacted] police that she had been trafficked by a person who lived in [redacted] and that she had also been in contact with the Department of Homeland Security and the Federal Bureau of Investigation (FBI). The transcript reflects, in pertinent part, that the [redacted] police determined "no trafficking occurred in [redacted] parish" and any investigation into human trafficking would occur in another parish or with the FBI. The related [redacted] Police Department report shows that their investigation related to a report of aggravated rape.

As the Applicant concedes, the letter from the DOJ did not state that there was an investigation or prosecution relating to the Applicant's trafficking claim or that any such investigation or prosecution was complete. Although USCIS generally defers to DOJ's determination that an investigation or prosecution is complete, the letter must state that an investigation or prosecution occurred, and that in the opinion of the Attorney General, the investigation or prosecution is complete. *See generally* 7 *USCIS Policy Manual* J.3(C)(1) (citing section 245(*l*)(1)(A) of the Act and 8 C.F.R. § 245.23(a)(4)). Per 8 C.F.R. § 245.23(e)(2)(i)(B), an applicant for adjustment of status who has less than three years of continuous physical presence in T-1 nonimmigrant status "must submit a document by the Attorney General or their designee, attesting that the investigation or prosecution is complete."

The letter from the DOJ in this case does not meet this requirement. Instead, it states that the DOJ was unable to find information about the case or determine whether any investigation "if opened, was subsequently closed," but that the Applicant and her counsel expressed their belief that "any such investigation" was closed. This language does not meet the criteria at 245(*l*)(1)(A) of the Act and 8 C.F.R. § 245.23(a)(4), (e)(2)(i)(B). Accordingly, the Applicant has not demonstrated eligibility to apply for T adjustment of status prior to accruing three years of continuous physical presence. We acknowledge the Applicant's claims and the evidence in the record that she had difficulty contacting law enforcement about her trafficking allegations. But the evidence does not show that an investigation or prosecution occurred or that, in the opinion of the Attorney General, any such investigation or prosecution was complete prior to her filing of her T adjustment application.

III. CONCLUSION

The Applicant has not demonstrated that, at the time of her initial filing, she met the requisite continuous physical presence in T nonimmigrant status to be eligible for adjustment of status to that of an LPR under section 245(*l*) of the Act.

ORDER: The appeal is dismissed.