U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27333455

Date: SEPT. 6, 2023

Appeal of Vermont Service Center Decision

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

The Applicant, who was previously granted "U" nonimmigrant status, 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).

The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), concluding that the Applicant did not meet the requirement of having been physically present in the United States as a U nonimmigrant for a continuous period of at least three years. The Director also dismissed the Applicant's subsequent combined motion to reopen and reconsider the adverse decision, and the matter is now before us on appeal.

On appeal, the Applicant asserts that the Director's decision was in error, because U.S. Citizenship and Immigration Services (USCIS) did not acquire jurisdiction over his U adjustment until his removal proceedings were terminated. He suggests, in the alternative, that USCIS should extend his now-expired U nonimmigrant status and allow him to file a new U adjustment application.

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

USCIS may adjust the status of a U nonimmigrant "admitted into the United States . . . under section 101(a)(15)(U) [of the Act]" to that of a lawful permanent resident provided that he "has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a [U] nonimmigrant" and otherwise establishes that his "continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." Section 245(m)(1) of the Act.

Corresponding regulations require a U adjustment applicant to establish, among other requirements, that he "[w]as lawfully admitted to the United States" as a U nonimmigrant, "[c]ontinues to hold such status at the time of application," and "[h]as continuous physical presence for 3 years" in the United States. 8 C.F.R. § 245.24(b)(2)(i)-(ii), (b)(3).

USCIS has exclusive jurisdiction over adjustment applications filed under section 245(m) of the Act. 8 C.F.R. §§ 245.24(f), (k).

II. ANALYSIS

The record reflects that the Applicant entered the United States without inspection in 2011. He was placed in removal proceedings, which were administratively closed in 2015, after USCIS determined that he appeared eligible for U nonimmigrant status.[1] On June 6, 2017, USCIS granted the Applicant U-1 nonimmigrant status until June 5, 2021. Less than three years later, on March 18, 2021, he filed the instant U adjustment application. As stated, the Director determined that the Applicant was not eligible to adjust his status under section 245(m) of the Act because he did not demonstrate that as of the date of filing he was physically present in the United States for a continuous period of at least three years since admission as a U-1 nonimmigrant. Following the denial of his U adjustment application in November 2021, the Applicant filed a Form I-539, Application to Extend/Change Nonimmigrant Status, which the Director denied concluding that USCIS did not have authority or discretion to approve the Form I-539, which was filed after the Applicant's U-1 nonimmigrant status had already expired, and while the Applicant was in removal proceedings.

On appeal, the Applicant submits evidence that an Immigration Judge terminated his removal proceedings in January 2023. He asserts that before that date USCIS did not have jurisdiction to consider his U adjustment application. The Applicant further states that although he "was actually eligible to adjust his status with USCIS based on his U visa admission," the U.S. Department of Homeland Security (DHS) prevented him from doing so by not agreeing to terminate his removal proceedings. He avers, referencing *Matter of Coronado Acevedo*, 28 I&N Dec. 648 (A.G. 2022), that it was only recently that the Immigration Judge had the authority to terminate his removal proceedings without DHS's consent, and USCIS is now free to adjudicate his U visa extension request and his U adjustment application.

As an initial matter, an applicant must be eligible for the requested benefit at the time of filing. 8 C.F.R. § 103.2(b)(1). As stated, a U adjustment applicant must have been in valid U status for at least three years since the date of admission as a U nonimmigrant. *See section* 245(m)(1)(A) of the Act (stating that an individual 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 [U] nonimmigrant"); 8 C.F.R. § 245.24(a)(1) (stating that continuous physical presence "means the period of time that the [individual] has been physically present in the United States and must be a continuous period of at least 3 years since the date of admission as a U nonimmigrant"), 245.24(d)(9) (stating that a U adjustment application must include, in part, "an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years"). The relevant form instructions, which carry the weight of regulations, reiterate this

[1] USCIS notified the Applicant that because the statutory cap for U-1 nonimmigrant visas had been reached for that fiscal year, he could not be granted U-1 status until new visas became available.

requirement. *See* 8 C.F.R. § 103.2(a)(1); Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status, at 30, https://www.uscis.gov/i-485 (providing that "[b]oth principal and derivative applicants may file [a U adjustment application] only after they have been physically present in the United States for a continuous period of at least three years since being admitted as a U nonimmigrant").

Here, the record shows, and the Applicant does not contest that at the time he filed the instant U adjustment application in March 2018, he was not physically present in the United States for a continuous period of at least three years since his admission as a U nonimmigrant in June 2017. Neither the Act nor the regulations provide for an exception to the requirement that an applicant be in lawful U status for at least three years at the time of filing.

We acknowledge the Applicant's statements suggesting that his ineligibility for U adjustment was the result of DHS not agreeing to terminate his removal proceedings, and that his premature filing should not be disqualifying because at that time his U adjustment application had "not yet come within the USCIS jurisdiction." As stated, however, USCIS has exclusive jurisdiction over adjustment applications filed under section 245(m) of the Act. Furthermore, the regulation at 8 C.F.R. § 245.24(l) specifically provides, in relevant part, that the regulation at 8 C.F.R. § 245.2, which states that USCIS has jurisdiction to adjudicate an application for adjustment of status unless the Immigration Judge has jurisdiction, does not apply to U adjustment applications. *See also Matter of Sanchez-Sosa*, 25 I&N Dec. 807, 811-12 (BIA 2012) (stating that "USCIS has exclusive jurisdiction over U visa petitions and applications for adjustment of status under section 245(m) of the Act" and that "[n]either a U visa petition nor an adjustment application based on an approved U visa petition may be renewed during [a noncitizen's] removal proceedings before the Immigration Judge") (cleaned up).

We also recognize that the Attorney General confirmed in *Matter of Coronado Acevedo* that Immigration Judges and the Board of Immigration Appeals consider and, where appropriate, grant termination or dismissal of removal proceedings in certain types of limited circumstances, including when "termination is necessary for the respondent to be eligible to seek immigration relief" before USCIS. 28 I&N Dec. at 651–52. However, as the Applicant does not point to any legal authority indicating that removal proceedings must be terminated for USCIS to exercise its exclusive jurisdiction over U adjustment applications, we are unable to meaningfully address his claim that the Director lacked jurisdiction to consider his U adjustment application until the Immigration Judge terminated the removal proceedings in 2023. Lastly, and more importantly, the Applicant does not explain how termination of his removal proceedings either before or after he filed the instant U adjustment application would have cured his ineligibility for adjustment of status under section 245(m) of the Act at the time of filing. Based on the above, we conclude that the Applicant has not overcome the sole ground for the denial of his U adjustment application.

Although the Applicant asserts that because he is no longer in removal proceedings the Director should favorably re-adjudicate his previously denied Form I-539 and extend his U nonimmigrant status, we decline to address this assertion because it is beyond the scope of our review on appeal. *See* 8 C.F.R. § 214.1(c)(5) (providing that there is no appeal from the denial of a request for extension of status).[2]

[2] *See also* USCIS, The Administrative Appeals Office, Jurisdiction and Types of Cases, https://www.uscis.gov/about-

In conclusion, the Applicant has not established that he was in U nonimmigrant status for at least three years since the date of his admission as a U nonimmigrant when he filed the instant U adjustment application. Consequently, he has not demonstrated eligibility for adjustment of status under section 245(m) of the Act, and his U adjustment application remains denied.

ORDER: The appeal is dismissed.

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