



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

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

In Re: 21617696

Date: APR. 13, 2022

Appeal of Nebraska Service Center Decision

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

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 Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (U adjustment application), and the matter is now before us on appeal. 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 remand this matter to the Director for further proceedings consistent with this decision.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may in its discretion adjust the status of an individual admitted into the United States as a U nonimmigrant to that of an LPR if, among other requirements, they have been physically present in the United States for a continuous period of at least three years since the date of admission as a U nonimmigrant and establishes that their 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; 8 C.F.R. § 245.24(b)(3), (6).

Continuous physical presence is defined as the period of time that an applicant 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 continuing through the date of the conclusion of adjudication of the [U adjustment] application.” 8 C.F.R. § 245.24(a)(1). A U adjustment applicant will be deemed to have not maintained continuous physical presence if they have departed the United States for any period in excess of 90 days or for any periods exceeding 180 days in the aggregate. Section 245(m)(2) of the Act; 8 C.F.R. § 245.24(a)(1). Such departures may be excused if the law enforcement agency that supported the applicant’s U petition certifies that the applicant’s absence was necessary to assist in the criminal investigation or prosecution or was otherwise justified. *Id.*

II. ANALYSIS

The Applicant was granted U nonimmigrant status from October 27, 2016, through October 26, 2020. She filed her adjustment application on October 9, 2020. The record indicates that after obtaining

U status, the Applicant was absent from the United States for 177 consecutive days, from December 29, 2016, to June 24, 2017, in order to visit her severely ill father in Mexico. The Director determined that because the Applicant was outside the United States for more than 90 continuous days after she obtained U nonimmigrant status, she did not satisfy the continuous physical presence requirement. The Director found that the record did not demonstrate she was physically present in the United States for a continuous period of at least three years before the filing of her application, and alternatively, did not submit a law enforcement certification indicating that her absence was necessary to assist in the criminal investigation or prosecution or was otherwise justified. Upon *de novo* review, we withdraw the Director's determination.

The Act allows an applicant to accrue continuous physical presence beginning from *any* admission in U status, including admissions made after departures that broke a prior period of continuous presence. Section 245(m)(1)(A) of the Act specifically requires that U adjustment applicants have “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 clause (i) or (ii) of section 101(a)(15)(U).” The regulation similarly indicates that the period of continuous physical presence accrues “since the date of admission as a U nonimmigrant.” 8 C.F.R. § 245.24(a)(1). Thus, the Act and regulation do not require the accrual of continuous physical presence from the first grant of U status, and instead, allow for a new period of continuous physical presence to commence upon any subsequent “date of admission as a U nonimmigrant.” Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(a)(1).

Although the period of continuous physical presence may commence after any admission in U status, U adjustment applicants must still have accrued the requisite minimum of three years of continuous physical presence before filing. *See* section 245(m)(1)(A) of the Act (requiring that the applicant “*has been* physically present in the United States for a continuous period of at least 3 years” (emphasis added)); 8 C.F.R. § 245.24(b)(3) (indicating that to be eligible, an applicant must have “continuous physical presence for 3 years”); *see also* 8 C.F.R. § 245.24(d)(5), (9) (requiring applicants to submit evidence of their three-year period of continuous physical presence with their application in order to establish eligibility for U adjustment); Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status, at p. 29, <https://www.uscis.gov/i-485> (explaining that “applicants may file Form I-485 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 [and must] continue to be physically present through the date of . . . decision on [the] application.”).

Here, the Director correctly concluded that the Applicant's departure from the United States for over 90 days, starting on December 29, 2016, interrupted her initial continuous physical presence period. However, a new period of continuous physical presence commenced upon her subsequent admission to the United States on June 24, 2017, and the record does not reflect that the Applicant departed the United States after that date. Accordingly, the Applicant has established that when she filed her adjustment application in October 2020, she had accrued the requisite three years of continuous physical presence, as section 245(m)(1)(A) of the Act requires.

Based on the foregoing, the Applicant has overcome the ground for denial of her U adjustment application, and we remand this matter to the Director to determine whether she has met the remaining eligibility requirements for adjustment under section 245(m) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.