



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

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

In Re: 20680643

Date: MAR. 3, 2022

Appeal of Vermont 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 Applicant’s Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (U derivative petition), was approved in October 2015. The Director of the Vermont Service Center denied her subsequently filed Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), in June 2021. The matter is now before us on appeal. The Administrative Appeals Office reviews 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 a U nonimmigrant “admitted into the United States . . . under section 101(a)(15)(U) [of the Act]” to that of an LPR if she meets the eligibility criteria and otherwise establishes that her 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) of the Act.

Implementing regulations require a U adjustment applicant to establish that, *inter alia*, she was “lawfully admitted to the United States” as a U nonimmigrant and that her “presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest.” 8 C.F.R. § 245.24(b)(2)(i), (b)(6).

An applicant must establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

**II. ANALYSIS**

In May 2013, the Applicant’s mother filed a Form I-918, Petition for U Nonimmigrant Status (U petition), as the victim of qualifying criminal activity. She filed a U derivative petition in June 2013 on behalf of the Applicant, her daughter. The Applicant’s U derivative petition was approved in October 2015. The Applicant was in El Salvador 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 and she entered the United States as a U-3 nonimmigrant in March 2016. The Applicant received an extension of her status until March 2020, and timely filed her U adjustment application in February 2020.

The Director denied the U adjustment application, concluding that the Applicant was not lawfully admitted as a U nonimmigrant, as required for adjustment of status under section 245(m) of the Act. The Director noted the unfortunate death of the Applicant's mother in April 2014 and found that the Applicant's U derivative petition was approved in error. Under 8 C.F.R. § 214.14(f)(4), the relationship between the U-1 principal and the qualifying family member must exist at the time the U petition was filed, and the relationship must continue to exist at the time the U derivative petition is adjudicated, and at the time of the qualifying family member's subsequent admission to the United States.<sup>1</sup>

On appeal, the Applicant asserts that adjustment of status under section 245(m) of the Act does not require a substantively lawful admission, Congress intended 245(m) to only require a procedurally regular admission, and USCIS does not have the authority to promulgate regulations which contradict this intent. She contends that to the extent that 8 C.F.R. § 245.24(b)(2)(i) can be read to require a substantively lawful admission, it is an impermissible construction of 245(m) and is not entitled to deference. The Applicant argues that she has established her eligibility for adjustment of status under 245(m) because she was inspected and admitted to the United States in U nonimmigrant status; she accrued three years of continuous presence before applying for adjustment; she is not subject to any grounds of inadmissibility; and her presence here is justified on humanitarian grounds, to ensure family unity, and is in the public interest. She further states that she notified USCIS and the DOS consular officer about her mother's death and was not informed by the DOS consular officer or USCIS that she was ineligible for U nonimmigrant status.

Upon review, the record reflects that the relationship between the Applicant's mother, the U-1 principal, and the Applicant, the qualifying family member, did not exist at the time the U derivative petition was adjudicated in 2015 or at the time of the Applicant's subsequent admission to the United States in 2016. As such, the record supports the Director's determination that the Applicant was not eligible for adjustment of status to that of an LPR under section 245(m) of the Act and 8 C.F.R. § 245.24(b)(2)(i).

Lawful admission, as utilized at 8 C.F.R. § 245.24(b)(2)(i), contemplates both procedural regularity and compliance with substantive legal requirements. *See Matter of Longstaff*, 716 F.2d 1439, 1441-42 (5th Cir. 1983) (holding that the term "lawfully admitted" at section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20), "denotes compliance with substantive legal requirements, not mere procedural regularity . . ."). An admission is not in compliance with substantive legal requirements if, at the time of admission, the individual was not entitled to it. *See Matter of Koloamatangi*, 23 I&N

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<sup>1</sup> 8 C.F.R. § 214.14(f)(4)(i) and (ii) allow two exceptions to this requirement: 1) If the U-1 principal proves that she has become the parent of a child after the U petition was filed, the child shall be eligible to accompany or follow to join the U-1 principal, and 2) If the principal was under 21 years of age at the time she filed the U petition, and filed the U derivative petition for an unmarried sibling under the age of 18, USCIS will continue to consider such sibling as a qualifying family member for purposes of U nonimmigrant status even if the principal is no longer under 21 years of age at the time of adjudication, and even if the sibling is no longer under 18 years of age at the time of adjudication.

Dec. 548, 550 (BIA 2003) (holding, likewise in the context of section 101(a)(20) of the Act, that an individual was not “‘lawfully’ admitted for permanent residence status if, at the time such status was accorded, he or she was not entitled to it” and that the individual is therefore “deemed, ab initio, never to have obtained lawful permanent resident status once [the] original ineligibility . . . is determined in proceedings”); *Injeti v. USCIS*, 737 F.3d 311, 346 (4th Cir. 2013) (adopting the reasoning of *Koloamatangi* in holding that, “to establish . . . lawful admi[ssion, the appellant] must do more than simply show that she was granted LPR status; she must further demonstrate that the grant of that status was ‘in substantive compliance with the immigration laws’”).

Based on the foregoing, the Applicant has not established that she was “lawfully admitted” to the United States in U nonimmigrant status. Accordingly, the Applicant was not eligible for adjustment of status to that of an LPR under section 245(m) of the Act and 8 C.F.R. § 245.24(b)(2)(i). Although we recognize the hardship to the Applicant that this result may cause, we lack the authority to waive the requirements of the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (providing that immigration regulations carry “the force and effect of law”).

**ORDER:** The appeal is dismissed.