



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

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

In Re: 8350650

Date: MAY 29, 2020

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 his derivative “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and the matter is now before us on appeal. With the appeal, the Applicant submits a brief reasserting his eligibility and other additional evidence.

The applicant bears the burden of establishing his eligibility pursuant to section 291 of the Act, 8 U.S.C. § 1361, and must establish his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office reviews the questions in this matter *de novo*. See *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

An applicant for adjustment of status under section 245(m) of the Act 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). Instructions for Report of Medical Examination and Vaccination Record, <https://www.uscis.gov/sites/default/files/files/form/i-693instr.pdf>.

## II. ANALYSIS

The Applicant, a native and citizen of Guatemala, was granted derivative U nonimmigrant status from October 1, 2014 until September 30, 2018, and he filed his U adjustment application in October 2018. The Director subsequently issued a request for evidence (RFE) instructing the Applicant to submit,

among other documents, a completed medical examination. The Applicant provided a medical examination, but the Director concluded that the record did not establish his eligibility because it indicated that he had not received the Hepatitis B vaccine, which is required based on the Applicant's age.

The record reflects that the civil surgeon who completed the medical examination marked that the vaccine was "not age appropriate." On appeal, the Applicant asserts that this was an error by the civil surgeon and is contradicted by the vaccination record that he provided both to the civil surgeon and to USCIS. He also asserts that the Director erred by not issuing a second RFE, as he could not have known about the civil surgeon's mistake and should have been provided the opportunity to correct it. In support, he references the USCIS Policy Manual, which instructs that, where a required vaccination is missing, "the officer should send an RFE for an updated Form I-693 showing the applicant has received those vaccinations." 8 *USCIS Policy Manual*, <https://www.uscis.gov/policymanual>, B.9 (C). He also states that the civil surgeon has issued a new medical examination showing that he received the required vaccine.

We disagree with the Applicant that policy manual required the Director to issue a second RFE, as it states only that "the officer *should* send an RFE" (emphasis added). More fundamentally, the Applicant has not corrected the deficiency in the record, as he has not submitted a complete and sealed medical examination that documents his required vaccinations and conforms to the instructions for the Form I-693. *See* Instructions for Report of Medical Examination and Vaccination Record, <https://www.uscis.gov/sites/default/files/files/form/i-693instr.pdf> (requiring the completed medical examination record to be submitted to USCIS in a sealed envelope). With his appeal, he provides a copy of one page excerpted from a new medical examination, which reflects his vaccinations for hepatitis B. However, contrary to his counsel's brief, the record does not include the complete, sealed examination.

Accordingly, the Applicant has not overcome the Director's reason for denying his application. Because he has not met his burden to establish his eligibility for adjustment, his application remains denied.

**ORDER:** The appeal is dismissed.