



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

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

In Re: 9367592

Date: JULY 21, 2020

Appeal of Vermont Service Center Decision

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

The Applicant seeks to become a lawful permanent resident (LPR) based on his “U” nonimmigrant status as a victim of qualifying criminal activity 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 to Register Permanent Residence or Adjust Status (U adjustment application), and the matter is now before us on appeal. Upon *de novo* review, we will remand the appeal.

**I. LAW**

A U nonimmigrant may adjust status to that of an LPR at the discretion of U.S. Citizenship and Immigration Services (USCIS) unless USCIS determines, based on affirmative evidence, that the U adjustment applicant unreasonably refused to provide assistance in a criminal investigation or prosecution. Section 245(m) of the Act. To establish eligibility, the applicant must demonstrate that since being granted U nonimmigrant status, he or she has not unreasonably refused to provide assistance in the investigation or prosecution of the qualifying criminal activity that formed the basis of the underlying U nonimmigrant status. 8 C.F.R. §§ 245.24(a)(5), (b)(5). The applicant may submit, as supporting evidence, a newly executed Form I-918 Supplement B, U Nonimmigrant Status Certification (Supplement B), or a signed statement from a law enforcement agency or official affirming that the applicant complied with, or did not unreasonably refuse to comply with, reasonable requests for assistance in the investigation or prosecution during the requisite period. 8 C.F.R. § 245.24(e)(1). If the applicant does not submit a newly executed Supplement B or signed statement as described above, he or she should submit an affidavit describing efforts to obtain such evidence. 8 C.F.R. § 245.24(e)(2).

An applicant must establish each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

## II. ANALYSIS

The Applicant, a native and citizen of India, was granted U nonimmigrant status in October 2014 as a victim of domestic violence by his former spouse in [ ] 2012. He subsequently filed his U adjustment application in January 2018. The Director determined that the Applicant did not demonstrate that he was helpful in the investigation or prosecution of the criminal activity and denied the U adjustment application.

The original Supplement B, signed in September 2012 by a captain of the [ ] North Carolina Police Department [ ], indicated that the case was on-going and that the Applicant was a victim of domestic violence, possessed information about the incident, and was helpful in the investigation of the crime. The Supplement B further indicated that the [ ] had not requested additional assistance from the Applicant and that the Applicant had not unreasonably refused to provide assistance in a criminal investigation or prosecution. In addition, Part 4.5 of the Supplement B stated that the incident was a misdemeanor offense and that the Applicant had not obtained a warrant on the suspect.<sup>1</sup>

The Applicant provided a second, unsigned Supplement B in November 2018 in response to the Director's request for evidence (RFE) with his U adjustment application. This second Supplement B was completed by a lieutenant with [ ] who "disapproved" the Applicant's request for an updated certification of his helpfulness, indicating that the case was inactive and amending the certification at Part 4.2 to indicate "no" regarding whether the victim "[h]as been, is being, or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above." The second Supplement B states that the Applicant called 9-1-1- 36 days after the incident occurred, that he did not provide a written statement, and that he told a detective on three occasions in July and August 2012 that he was going to the Magistrate's office to obtain a warrant. It further explains that a detective attempted to communicate with and left messages for the Applicant on two occasions in September 2012, and that in October 2012, the last contact between [ ] and the Applicant, the Applicant called a [ ] division office to "update his current address, but did not provide any further information and no warrants had been obtained." A supplemental portion of the second Supplement B states that as of November 2016, "there [had] been no attempt by the [Applicant] to make contact with [ ] personnel to request any update on this case/investigation and/or update their personal/contact information," and that "no warrant or criminal summons was obtained by the [Applicant] for the suspect in this case."

In her decision, the Director determined that the second Supplement B was insufficient evidence of the Applicant's helpfulness because it was not properly executed. The Director also noted that [ ] had refused to sign the second Supplement B because the Applicant had not obtained the requisite warrant, resulting in no investigation or prosecution being performed and signifying that he was not helpful in the investigation or prosecution of the criminal activity detailed on his original Supplement B. The decision states that the Applicant "did not meet the regulat[ory] requirement to continue to be

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<sup>1</sup> In addition, in response to the Director's request for evidence (RFE) seeking the statutory citation for the criminal activity being investigated or prosecuted, the Applicant provided a Supplement B signed in December 2013 by a captain in the Special Victims Division of [ ]. As relevant here, the key distinction between this Supplement B and the original, September 2012 Supplement B is the inclusion of a statutory citation for the crime. Unless otherwise indicated, we do not refer to the December 2013 Supplement B in the instant discussion.

helpful in the investigation and/or prosecution of the criminal activity listed on [the original Supplement B].”

On appeal, the Applicant claims that the Director and [ ] erred in placing too much weight on his failure to obtain a warrant, and that the Director afforded too much weight to the non-execution of the Supplement B. He emphasizes that the second Supplement B indicates that the last contact between the police and victim occurred in October 2012, and that when asked if the Applicant had unreasonably refused to provide assistance in the investigation or prosecution, the lieutenant answered “no.”

Upon *de novo* review, although the regulations allow a U adjustment applicant to submit a newly executed Supplement B as evidence that he or she has not unreasonably refused to provide assistance in an investigation or prosecution, this evidence is not required. See 8 C.F.R. § 245.24(e) (explaining that an applicant may submit a newly executed Supplement B or a signed statement from a law enforcement agency or official to meet this requirement and providing for alternative forms of evidence). Here, as the Applicant notes on appeal, the unexecuted Supplement B shows that the Applicant’s last contact with [ ] prior to requesting the Supplement B, occurred in October 2012. This information is particularly relevant as it indicates that the [ ] did not actually request the Applicant’s assistance in the investigation or prosecution of the qualifying criminal activity since his grant of U nonimmigrant status in October 2014, the relevant time period under 8 C.F.R. §§ 245.24(a)(5), (b)(5).<sup>2</sup> As such, notwithstanding the unexecuted Supplement B and the lieutenant’s view that the Applicant was not helpful, the preponderance of the evidence shows that the Applicant did not unreasonably refuse to provide assistance in the criminal investigation or prosecution since being granted U nonimmigrant status in October 2014. See *Matter of Chawathe*, 25 I&N Dec. at 375-76 (explaining that to satisfy his or her burden under the preponderance of the evidence standard, an applicant must show that his or her claims are “more likely than not” or “probably” true).

### III. CONCLUSION

The Applicant has demonstrated that he did not unreasonably refuse to provide assistance in the criminal investigation or prosecution since being granted U nonimmigrant status. Accordingly, we will remand the matter to the Director to determine whether the Applicant has satisfied the remaining eligibility requirements for adjustment of status 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.

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<sup>2</sup> The Director’s decision indicates concern with the Applicant’s initial helpfulness to law enforcement in the investigation of the domestic violence perpetrated against him. However, the Applicant’s U petition was approved upon a finding of helpfulness even though the original Supplement B, as well as the December 2013 Supplement B provided in response to the RFE, indicated that he had not obtained a warrant. In addition, the record does not show that the [ ] withdrew the original Supplement B or disavowed its contents, nor does it show that approval of the Applicant’s U petition was in error or that any such error was addressed under the U revocation provisions at 8 C.F.R. § 214.14(h)(2).