U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25151783

Date: FEB. 24, 2023

Motion on Administrative Appeals Office Decision

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

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 "U" nonimmigrant status. 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 a favorable exercise of discretion was not warranted because the Applicant's positive and mitigating equities did not outweigh the adverse factors in his case. We dismissed the Applicant's appeal and a combined motion to reopen and reconsider on the same basis. The matter is now before us on a second combined motion to reopen and reconsider. Upon review, we will dismiss the motion.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The issue before us is whether the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We find that the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

With respect to the Applicant's request for reconsideration, counsel for the Applicant asserts that this office abused its discretion when we dismissed the Applicant's appeal and the subsequent combined motion. In support, counsel submits two 2017 non-precedent decisions from this office and maintains that because those cases were sustained and "factually similar" to the Applicant's case, it was an abuse of discretion to dismiss the Applicant's appeal. The decisions submitted with the instant motion were not published as a precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the

individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. The Applicant has thus not established that our previous decisions to dismiss his appeal and the combined motion to reopen and reconsider were based on an incorrect application of law or policy and that the decisions were incorrect based on the evidence in the record of proceedings at the time of the decisions.

The Applicant also requests that we reopen the proceedings based on his contention that he has "new, previously unavailable evidence showing that he is worthy of a favorable exercise of discretion." In support, the Applicant submits an updated affidavit from his lawful permanent residence spouse, D-M-Q-F-,[1] letters in support from a business associate/friend and his brother-in-law, financial documentation pertaining to his spouse and his business, photographs of the Applicant with his family and friends, and copies of documents previously provided.

As we detailed in our previous decisions, the Applicant has family ties in the United States, including his U.S. citizen son and LPR spouse. We also acknowledge the hardships the Applicant and his family would experience if the Applicant were not allowed to remain in the United States, as detailed in the record and in the Applicant's spouse's 2022 affidavit submitted with the instant motion. Letters of support in the record and with the instant motion indicate that the Applicant is a good man, a good father, a hard worker, and trustworthy. Documentation submitted with the instant motion also establishes the Applicant's business ownership. We also note that the Applicant has been residing in the United States since 2015, owns a home, has attended a chemical dependency treatment program, has paid taxes, and has acknowledged that he "made mistakes that I am not proud of" but has committed "to becoming a better man for my family."

Notwithstanding the positive factors in his case, we again conclude that the Applicant has not demonstrated that he merits a favorable exercise of discretion to adjust his status to that of an LPR. The Applicant's primary adverse factor is his involvement in crimes that, as noted by the Director, "created victims" and which occurred months after arriving in the United State as a "U" nonimmigrant. As we previously detailed, in [redacted] 2015 the Applicant was charged with DWI – Operate Motor Vehicle Under Influence of Alcohol and Fleeing a Peace Officer in a Motor Vehicle in Minnesota. In [redacted] 2016, the Applicant was cited with Driver Involved Fails to Stop for Collision and Driving After Revocation. In [redacted] 2018, the Applicant was arrested and charged with Domestic Assault.

We have previously stated that driving under the influence of alcohol is both a serious crime and a significant adverse factor relevant to our consideration of whether the Applicant warrants a favorable exercise of our discretion. *See Matter of Siniaiskas*, 27 I&N Dec. 207, 207 (BIA 2018) (finding DUI a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *see also Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (A.G. 2019) (discussing the "reckless and dangerous nature of the crime of DUI"). Further, the incident occurred approximately five months after the Applicant's arrival to the United States and while he held U nonimmigrant status.

Additionally, the Applicant was arrested and charged with domestic assault in [redacted] 2018, again while in U nonimmigrant status, and ultimately convicted of disorderly conduct due to a plea deal and subject to a "No Contact Order." USCIS may consider all factors in making its discretionary

[1] Initials are used to protect the identities of individuals.

determination and this information does not equate with a finding that the underlying conduct or behavior leading to the charges did not *occur*. *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS may consider all factors in making its discretionary determination and that it "will generally not exercise its discretion favorably in cases where the applicant has *committed* or been convicted of" certain classes of crimes) (emphasis added). We again acknowledge the Applicant's statements that he has not had contact with police since his [redacted] 2018 arrest but this information does not lessen the nature, recency, and seriousness of the Applicant's criminal history while in U nonimmigrant status.

Here, the Applicant has not overcome our previous determinations. While we acknowledge the positive factors in this case, as detailed in our previous decisions and above, the new evidence submitted on motion does not sufficiently impact the nature, recency, and seriousness of the Applicant's criminal record such that he has met his burden to establish that he warrants adjustment of status to that of an LPR as a matter of discretion. Consequently, the Applicant has not established that his adjustment of status to that of an LPR under section 245(m) of the Act is warranted.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.