In Re: 20602713

Date: FEB. 9, 2022

Motion on Administrative Appeals Office Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to become a lawful permanent resident based on her "T-1" nonimmigrant status as a victim of a severe form of trafficking in persons under section 245(*l*) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(*l*). The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (T adjustment application), concluding that the Applicant did not establish her good moral character and that she merits adjustment of status in the exercise of discretion. We dismissed the Applicant's subsequent appeal, and the matter is now before us on a motion to reconsider. In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible, relevant evidence for us to consider; however, we determine, in our sole discretion, the value of that evidence. 8 C.F.R. § 214.11(d)(5). Upon review, we will dismiss the motion.

I. LAW

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 may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of individuals admitted into the United States as a T-1 nonimmigrant to that of a lawful permanent resident (LPR) if, among other requirements, they establish they have been a person of good moral character since the date of admission as a T nonimmigrant. Section 245(*l*)(1)(B) of the Act; *see also* 8 C.F.R. § 245.23(a)(5), (g) (stating that T adjustment applicants must demonstrate their good moral character "since first being lawfully admitted as a T-1 nonimmigrant and until USCIS completes the adjudication of the application for adjustment of status"). Additionally, the applicant must establish that they merit a favorable exercise of discretion. Section 245(*l*)(1) of the Act; 8 C.F.R. § 245.23(e)(3).

II. ANALYSIS

The Applicant, a citizen of China, was granted T-1 nonimmigrant status through an approved Form I-914, Application for T Nonimmigrant Status, for the period beginning September 2013 through September 2017. She filed her T adjustment application based on her T status in March 2017. The Director denied the T adjustment application and a subsequent motion, concluding that the Applicant did not establish her good moral character and did not merit a favorable exercise of discretion.

In our decision on appeal, we agreed with the Director that the Applicant did not establish her good moral character as section 245(*l*)(1)(B) of the Act requires. As we noted on appeal, the Applicant was arrested in [   ] 2017 for the offenses of (1) massage therapy without a license, (2) prostitution – business, and (3) prostitution – general. She was subsequently convicted of practicing massage therapy without a license and prostitution following a jury trial in 2018 but the trial court acquitted her on the remaining charge of prostitution – business.[1] As part of her sentence, the Applicant was sentenced to a one-year jail term (suspended) for her prostitution conviction, in addition to a sentence of six months in jail and three years of probation with the first 18 months under supervision for her remaining conviction. On appeal, the Applicant submitted a [   ] 2019 appellate decision in her criminal case affirming the judgement of the lower court and upholding her convictions.

We concluded that the Applicant lacks good moral character under the "catch-all" provision of section 101(f) of the Act as well as under the regulatory standards of 8 C.F.R. § 245.23(g), as her recent criminal conduct and conviction, which occurred during the period for which she must establish her good moral character, fell below the standards of the community and outweighed the positive equities in her case. We discussed that the Applicant denied culpability, claiming that she was arrested only because her name was on the lease of the business where a prostitution business was operating, but did not address the state appellate court decision which reflects that the investigating detective who testified in her criminal case specifically "identified [the Applicant] as the woman who offered sexual services to him and as the only person he saw in the massage parlor the entire time he was there." We considered the Applicant's statement and evidence that she provides financially for her child and disabled spouse, is employed, volunteers in a church, donates to charity, and has consistently filed tax returns. We also considered letters of support she submitted from family members, friends, and members of her church and community, which asserted generally that she is a person of good character but did not reference the Applicant's criminal history. We concluded that due to the Applicant's failure to submit the underlying police report and address the circumstances surrounding her arrest, insufficient evidence of her remorse and rehabilitation, and her continuing probation and jail sentence, she was unable to establish her good moral character under the final paragraph of section 101(f) of the Act and pursuant to the regulation at 8 C.F.R. § 245.23(g). Accordingly, she did not meet the good moral character requirement under section 245(*l*)(1)(B) of the Act.

Additionally, we determined that the Applicant did not meet her burden of establishing that she merits a favorable exercise of discretion. We noted the serious nature and recency of the Applicant's criminal

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[1] On appeal, the Applicant submitted an opinion from the Court of Special Appeals of Maryland (appellate court) affirming the Applicant's convictions for prostitution and operating as a massage therapist without a license. In that opinion, the appellate court noted that the jury had also convicted the Applicant of receiving earnings of a prostitute, but that the trial court subsequently entered judgement in her favor on that count, finding that an individual "cannot be guilty of the substantive offense of receiving earnings of a prostitute if that person is also the one engaged in prostitution."

history and the lack of sufficient evidence of her remorse and rehabilitation in the record, concluding that she had not demonstrated that the adverse factors were outweighed by the favorable equities in her case such that she warrants a favorable exercise of our discretion to adjust her status to that of an LPR under section 245(*l*) of the Act. 8 C.F.R. § 245.23(e)(3).

On motion, the Applicant submits a personal statement in which she describes the hardship she and her family could experience if she were forced to return to China. She restates her role in providing for her family, noting as she did previously that her spouse was injured in a car accident in 2018 and is unable to work enough to support the family. She also states that her son from a prior relationship now lives with her and relies on her to help him function due to a history of trauma and "mental problems." The Applicant notes that her U.S. citizen daughter is now attending kindergarten and depends on the Applicant for support. She further states that she considers the United States her home and would struggle to find a job and necessary medical treatment in China. She reiterates that she attends Buddhist temples and donates to charity. Additionally, the Applicant submits her 2020 federal income tax return and other financial documents, medical records relating to herself and her spouse, evidence of ongoing charitable donations, family photographs, and one letter of support stating that she is "a very kind, reliable and trustworthy person."

The Applicant does not allege that our decision on appeal 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, as required for a motion to reconsider. Further, she does not address on motion our prior conclusions that she did not establish her good moral character or eligibility for adjustment of status in the exercise of discretion due to the recency and nature of her conviction, her failure to submit evidence relating to her arrest, lack of remorse and rehabilitation, and continuing probation. Accordingly, the Applicant has not met the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3), nor has she established her eligibility for adjustment of status under section 245(*l*) of the Act.

ORDER: The motion to reconsider is dismissed.