U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29463277

Date: JAN. 9, 2024

Motion on Administrative Appeals Office Decision

I-485, Application for Adjustment of Status of a T Nonimmigrant

The Applicant seeks to adjust her status to that of a lawful permanent resident (LPR) under section 245(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1255(l), based on her "T" nonimmigrant status. The Director of the Vermont Service Center denied the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (T adjustment application), concluding that the applicant did not hold T nonimmigrant status when she filed her T adjustment application. We summarily dismissed the Applicant's subsequent appeal, and the matter is now before us on a combined motion to reopen and reconsider. On motion, the Applicant submits additional evidence, previously submitted evidence and a brief reasserting her eligibility for the benefit sought. Upon review, we will dismiss the motions.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of applicants "admitted into the United States" as T nonimmigrants to that of an LPR provided that a series of eligibility requirements have been met. Section 245(l)(1) of the Act. The implementing regulations further require that applicants "[c]ontinue[] to hold such status at the time of application . . . ." 8 C.F.R. § 245.23(a)(2)(ii).

A motion to reopen must state new facts and be supported by 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 the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought. The burden of proof is on the applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was granted T nonimmigrant status from September 2016 to September 2020. She filed her T adjustment application on March 26, 2021.[1] The Director subsequently denied the application, concluding that the Applicant was not eligible for adjustment of status because she did not hold T nonimmigrant status when she filed her T adjustment application.

On motion, the Applicant contends that she filed her application prior to the expiration of her T nonimmigrant status in September 2020. She states that her credit card payment she submitted with her application was declined because she was unemployed and experiencing financial hardship due to the COVID-19 pandemic. In support of her contention, the Applicant submits copies of the mailing envelopes and tracking information from the United States Postal Service (USPS), unemployment benefits documentation, financial documents including bank statements and car payment bills.

Our review confirms that USCIS rejected the filing of the Applicant's T adjustment application because she failed to submit the appropriate filing fee. USCIS will reject a benefit request that is not signed and submitted with the correct filing fee. 8 C.F.R. § 103.2(a)(7)(i). 8 C.F.R. § 103.2(a)(7)(i). Applications that are rejected by USCIS do not retain a filing date. 8 C.F.R. § 103.2(a)(7)(ii). In this case, the Applicant did not file her T adjustment application until USCIS received the correct filing fee in March 2021— six months after her T nonimmigrant status expired. Consequently, the Applicant was not in T nonimmigrant status when she filed her T adjustment application, as 8 C.F.R. § 245.23(a)(2)(ii) requires. While we acknowledge the Applicant's arguments on appeal and the hardship that this result may cause her, 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) (stating that immigration regulations carry "the force and effect of law").

III. CONCLUSION

The Applicant has not provided documentary evidence of new facts sufficient to establish her eligibility or established that our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision. Accordingly, the Applicant has not established her eligibility for adjustment of status under section 245(l) of the Act.[2]

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[1] The Director rejected the Applicant's T adjustment application on January 20, 2021, February 11, 2021 and March 11, 2021 because she did not submit the correct filing fee with her application.

[2] This decision is without prejudice to the filing of a new T adjustment application should the Applicant request, and receive approval of, an extension of her T nonimmigrant status.