U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20993211

Date: APR. 20, 2022

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) based on his derivative "U" nonimmigrant status 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 for Adjustment of Status of U Nonimmigrant (U adjustment application), concluding that a favorable exercise of discretion was not warranted. We dismissed the Applicant's appeal, again as a matter of discretion, and he now files a motion to reopen and motion to reconsider, arguing that we erred in the decision dismissing his appeal. Upon review, we will dismiss the motions.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) "may adjust the status" of a U nonimmigrant to that of an LPR if he or she meets all other eligibility requirements and "in the opinion" of USCIS, his or her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. The applicant bears the burden of establishing eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This burden includes showing that discretion should be exercised in his or her favor. 8 C.F.R. §§ 245.24(b)(6), (d)(11).

USCIS may consider all factors when making its discretionary decision on the application. 8 C.F.R. § 245.24(d)(11). Generally, favorable factors such as family unity, length of residence in the United States, employment, community standing, and good moral character may be sufficient to merit a favorable exercise of administrative discretion. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970); *see also* 7 *USCIS Policy Manual* A.10(B)(2), https://www.uscis.gov/policymanual (providing guidance to USCIS adjudicators regarding factors to consider in discretionary adjustment of status determinations). However, where adverse factors are present, the applicant may submit evidence of mitigating equities. 8 C.F.R. § 245.24(d)(11) (stating that, "[w]here adverse factors are present, an applicant may offset these by submitting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate").

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

In our prior decision dismissing the Applicant's appeal, incorporated here by reference, we determined that he had not established that his continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest, as required by section 245(m)(1)(B) of the Act, because his criminal history outweighed his positive and mitigating equities and he had not demonstrated that he merited a favorable exercise of discretion. Specifically, the record established that the Applicant was charged with domestic assault and plead down to disorderly conduct, was cited for no driver's license in possession, and was adjudicated delinquent on his charges of fleeing a peace officer and driving while intoxicated (DWI)—offenses which showed a disregard for the laws of the United States and occurred while the Applicant held U nonimmigrant status. While the Applicant has submitted some new evidence on motion, he has not established legal error in our prior decision and has not overcome these determinations on motion.

On motion to reopen, the Applicant submits a marriage certificate for the Applicant and D-M-Q-F-,[1] new personal statements from himself and D-M-Q-F-, evidence of his completion of an evening "Outpatient [Chemical Dependency] Treatment Program" at [redacted] in April 2021, pay stubs for himself and D-M-Q-F-, 2019 and 2020 taxes for D-M-Q-F-, letters of support from family and friends, photographs, and evidence of property owned by D-M-Q-F- and the Applicant's mother. The Applicant states, through counsel, that this new evidence "prove[s] that [he] is worthy of a favorable exercise of discretion and that his continued presence in the U.S. is justified on humanitarian grounds, to ensure family unity, and is otherwise in the public interest, despite the adverse factors." Specifically, counsel states that the Applicant's marriage to a LPR is new evidence that merits reopening the U adjustment application for USCIS to consider additional family ties in the United States and the alternative routes through which the Applicant may adjust status in the future. Counsel also states that, while the property is not in the Applicant's name, it is property purchased by his spouse and his mother, and he and his spouse are the ones who make the monthly payments. Further, counsel states that the Applicant's completion of the chemical dependency treatment program is evidence of his rehabilitation. Counsel concludes that all of this evidence warrants the reopening of the U adjustment application because it was not previously available and is further evidence of the positive and mitigating equities in the Applicant's case.

In his statement, the Applicant indicated that he has not had any contact with police since 2018 and that he completed an outpatient chemical dependency program in April 2021. Specifically, he stated that, through the program, he "learned the effects of alcohol," "realized that alcohol has serious consequences," and that he "would never have made the mistakes [he] made had it not been for

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

alcohol." He further stated that he "still drink[s] but [] limit[s him]self to a maximum of three drinks" because he knows that if he drinks more than that, "it could negatively affect [his] son."

In her statement, D-M-Q-F- indicated that she has noticed several changes in the Applicant over the past three years and that "he has found better balance in his life." She stated that "[h]aving consistent work has helped [the Applicant] to avoid alcohol" and that he "has stayed out of trouble and has matured." She also stated that "[s]ince the single incident in [redacted] of 2018, [she has] not felt afraid of [the Applicant] or worried that he was going to do something unsafe" and that she attributes his changes to "him realizing that he had to make a change for a better life, and to his attendance of outpatient chemical dependency treatment." Finally, she stated that the Applicant "has become more responsible with alcohol use as well and he drinks a lot less."

While we recognize that the Applicant completed an outpatient chemical dependency treatment program and he and D-M-Q-F- stated that he's learned from that program and changed his drinking habits, this information does not lessen the nature, recency, and seriousness of the Applicant's criminal history. As explained in detail on appeal, the Applicant was charged with domestic assault and plead down to disorderly conduct, was cited for no driver's license in possession, and was adjudicated delinquent on his charges of fleeing a peace officer and driving while intoxicated (DWI). Here, the new evidence submitted on motion does not sufficiently impact the nature, recency, and seriousness of the Applicant's juvenile arrest and delinquent adjudication on one count of gross misdemeanor fleeing a peace officer in a motor vehicle and one count of misdemeanor DWI and subsequent arrest for domestic assault and amended conviction of disorderly conduct, 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.

On motion to reconsider, the Applicant, through counsel, claims that we "failed to give proper weight to the positive discretionary factors in [the Applicant's] favor." According to counsel, the Applicant previously submitted "10 pages listing the positive discretionary factors in his case, including acknowledgement and remorse of the adverse factors related to his criminal history during his time in the U.S." and "the USCIS policy manual directs that USCIS officers should consider a non-exhaustive list of [16] factors," which USCIS and the AAO erroneously did not consider. *See* 7 *USCIS Policy Manual* A.10(B)(2), https://www.uscis.gov/policymanual (providing guidance to USCIS adjudicators regarding factors to consider in discretionary adjustment of status determinations). Counsel argues that, while the Applicant's most significant adverse discretionary factor was his criminal history, he was "only a child when he was arrested for a DUI and fleeing a police officer, and a young man when he was convicted for disorderly conduct" and that the "[d]enial of his application [] is a disproportionate consequence to these offenses considering his young age at the time each was committed." Counsel further argues that the Applicant "has matured through this process, learned positive coping mechanisms through alcohol classes and has demonstrated this awareness through three years of good conduct."

First, as reflected in our prior decision, we addressed the Applicant's positive equities on appeal and, though we summarized the information submitted to USCIS in our decision, each piece of evidence was thoroughly considered and accorded appropriate weight. We recognized that the record contains positive and mitigating equities. The Applicant has family ties in the United States, including his U.S. citizen son and LPR then-partner. Letters of support in the record indicate that the Applicant is a good man, a good father, a hard worker, and trustworthy. However, notwithstanding these factors, we

concluded on appeal that the Applicant had not demonstrated that he merits a favorable exercise of discretion to adjust his status to that of an LPR.

Next, while the Applicant was a minor when he was arrested for a DUI and fleeing a police officer and later adjudicated delinquent, and an adjudication of youthful offender status or juvenile delinquency is not a criminal conviction under the immigration laws, all relevant factors are considered in assessing an applicant's eligibility for adjustment of status as matter of discretion. *Matter of Devison-Charles,* 22 I&N Dec. 1362, 1373 (BIA 2000); 8 C.F.R § 245.24(d)(11). Regardless of the Applicant's age at the time of the incidents, juvenile offenses are factors relevant to the determination of whether a favorable exercise of discretion is warranted. *See Castro-Saravia v. Ashcroft*, 122 Fed. Appx. 303, 304-05 (9th Cir. 2004) (concluding that *Matter of Devison* does not preclude consideration of juvenile delinquency when making a discretionary determination). *See generally Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996) (including, in adverse factors relevant to discretionary relief, "the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident"). As previously discussed in our decision, 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, in considering the full scope of the Applicant's juvenile offense, the incident occurred approximately five months after his 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, while in U nonimmigrant status, and ultimately convicted of disorderly conduct due to a plea deal and subject to a "No Contact Order." While the Applicant and D-M-Q-F- have provided statements that a language barrier caused a misunderstanding with the officers who were on the scene for the Applicant's arrest for domestic assault and have established that they are now married, the implementing regulations provide that USCIS may consider all factors in making its discretionary 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 take into account 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 acknowledge the Applicant's statements that he has not had contact with police since his [redacted] 2018 arrest and has completed an outpatient chemical dependency treatment program, but again, this information does not lessen the seriousness of the Applicant's criminal history while in U nonimmigrant status.

Here, the Applicant has not submitted new evidence or established legal error in our prior decision, and has not overcome our previous determinations on motion. As such, the Applicant has not demonstrated on motion that he merits a favorable exercise of discretion. Consequently, the Applicant has not established that his adjustment of status to that of an LPR under section 245(m)(3) of the Act is warranted.

III. CONCLUSION

The Applicant has not submitted new evidence to establish his eligibility for adjustment of status under section 245(m) of the Act. Moreover, he has not demonstrated any error of law or policy in our decision dismissing his appeal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.