U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21780892

Date: APR. 28, 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) 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 to Register Permanent Residence or Adjust Status (U adjustment application), and we dismissed the Applicant's subsequent appeal. The matter is now before us on a motion to reopen. Upon review, we will dismiss the motion.

I. LAW

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). 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. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant, a native and citizen of Guatemala, was granted U-1 nonimmigrant status as the victim of qualifying criminal activity from October 2014 to September 2018, and timely filed his U adjustment application in July 2018. The Director denied the application, concluding that the Applicant had not submitted sufficient evidence to establish that he merited a favorable exercise of discretion.

In our prior decision on appeal, incorporated here by reference, we acknowledged the Applicant's positive and mitigating equities including his teenage son in derivative U nonimmigrant status, his son's medical condition, his own medical treatment for schizophrenia, his stable employment, and his and payment of taxes. Additionally, we acknowledged letters from the Applicant's son and a coworker, stating that the Applicant is a good father and a responsible and honest person. Nevertheless, we concluded that the positive and mitigating equities present in the Applicant's case were outweighed by the nature, recency, and seriousness of his criminal convictions and the lack of sufficient evidence to establish his rehabilitation.

We summarized the Applicant's criminal history, his primary adverse factor. We noted that the Applicant was arrested in [redacted] 2012 and [redacted] 2013 for public intoxication. Both charges were later dismissed. The Applicant was arrested in [redacted] 2015 for "Battery on Peace Officer/Emergency Personnel/Etc" and "Public Intoxication." The Applicant pled *nolo contendere* to public intoxication. The charge for "Battery on Peace Officer/Emergency Personnel/Etc" was dismissed. The Applicant was arrested in [redacted] 2016 for "Battery Upon a Peace Officer and Designated Persons," "Resist, Obstruct, Delay of Peace Officer or EMT," "Battery," "Public Intoxication, and "Assault on Peace Officer/Emergency Personnel/Etc." The Applicant pled *nolo contendere* to "Battery Upon a Peace Officer and Designated Persons" and "Public Intoxication." The remaining charges were dismissed. The Applicant was again arrested in December 2017 for "Battery on Police Officer/Emergency Personnel/Etc." The Applicant was arrested for "Public Intoxication" in [redacted] 2018. However, no formal charges were ever filed in court. Finally, the Applicant was arrested in [redacted] 2018 for "Vandalism $400 or More" and "Resist, Obstruct, Delay of Peace Officer or EMT." He pled *nolo contendere* to the charge of "Vandalism $400 or More." The remaining charge was dismissed.

Regarding the Applicant's criminal history, we highlighted the fact that the Applicant did not acknowledge his December 2017 arrest or submit police reports or court documentation regarding said arrest. We further highlighted that the Applicant's [redacted] 2018 arrest occurred two months after filing his U adjustment application and while he was still on probation from a previous conviction.[1] We noted that the Applicant had not provided evidence that he successfully completed probation for his [redacted] 2018 arrest or any of his other arrests on appeal. Lastly, we acknowledged the Applicant's assertion that he suffered from schizophrenia and had used alcohol in the past to cope with his mental health symptoms. However, we stressed that the Applicant's U adjustment application would be adjudicated based on the record before us, which included multiple criminal convictions.

On motion, the Applicant again contends that he warrants U adjustment as a favorable exercise of discretion. He argues that he was not arrested in [redacted] 2017, and that "[t]he inclusion of this additional arrest in [our] decision [wa]s an error that impact[ed] [his] case in a negative way." He submits a letter from the [redacted] indicating that December 2017 was the date that he reported to the county's Sheriff Work Program. He maintains that since the arrest never happened, it should not be considered an additional adverse factor in his case. Upon review of this additional evidence, we agree with the Applicant that the record does not indicate he was arrested in December 2017 for "Battery on Police Officer/Emergency Personnel." However, the fact remains that the Applicant was cited or arrested on multiple occasions between 2012 and 2018. He pled *nolo contendere* to public intoxication in [redacted] 2016, public intoxication and "Battery Upon a Peace Officer and Designated Persons" in [redacted] 2017 and "Vandalism $400 or More" in [redacted] 2018. As we noted in our prior decision, those arrests occurred while he was in U nonimmigrant status and while he was still serving probation for prior convictions. Although we find that the Applicant was not arrested for "Battery on Police Officer/Emergency Personnel" in December 2017, we still consider the Applicant's convictions for public intoxication, battery, and vandalism to be serious adverse factors in our discretionary determination.

[1] As a result of his [redacted] 2018 arrest, the Applicant was placed on an additional 48 months of probation until [redacted] 2020, 51 months after he filed his U adjustment application seeking to live permanently in the United States as an LPR.

The Applicant also contends that he has demonstrated "true" rehabilitation as he successfully completed his probation in [redacted] 2020, and was not arrested again during or after his probation ended at that time. In support of his contentions, the Applicant resubmits court disposition records for his arrests, and argues that his terms of probation terminated as stated in those records.[2] Upon review, although the Applicant expressed general remorse for his criminal history, beyond court records indicating that he completed his probationary sentences, paid fines and court costs, and completed court-mandated anger management in 2018, the record contains insufficient evidence of his rehabilitation. *See Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991) (stating that an applicant for discretionary relief "who has a criminal record will ordinarily be required to present evidence of rehabilitation before relief is granted as a matter of discretion"). Rather, the record indicates that the Applicant's 2016 conviction for public intoxication did not deter him from drinking in public again and assaulting, battering, or resisting a peace officer—serious conduct that is not easily overlooked. To determine whether an applicant has established rehabilitation, we examine not only an applicant's actions during the period of time for which he was required to comply with court-ordered mandates, but also after his successful completion of them. *See U.S. v. Knights*, 534 U.S. 112, 121 (2001) (recognizing that the state has a justified concern that an individual under probationary supervision is "more likely to engage in criminal conduct than an ordinary member of the community"); *Doe v. Harris*, 772 F.3d 563, 571 (9th Cir. 2014) (noting that, although a less restrictive sanction than incarceration, probation allows the government to "impose reasonable conditions that deprive the offender of some freedoms enjoyed by law abiding citizens") (internal quotations omitted). In this case, as noted above, it is of concern that the Applicant's 2016 arrest for "Battery Upon a Peace Officer and Designated Persons," "Resist, Obstruct, Delay of Peace Officer or EMT," "Battery," "Public Intoxication," and "Assault on Peace Officer/Emergency Personnel" occurred while he was on probation resulting from his 2015 arrest and conviction for public intoxication. Additionally, the Applicant was arrested in [redacted] 2018 for "Vandalism $400 or More" and "Resist, Obstruct, Delay of Peace Officer or EMT" while he was still on probation for his 2016 conviction. Further, at the time the appeal was filed, the Applicant was still on probation for his last arrest for "Vandalism $400 or More," and "Resist, Obstruct, Delay of Police Officer or EMT."[3] Accordingly, we find no error in our prior decision that the Applicant did not warrant a favorable exercise of discretion due to the nature, recency, and seriousness of his criminal history and the lack of sufficient evidence to establish his rehabilitation.

We acknowledge the Applicant's additional evidence and assertion that we previously noted his many positive and mitigating equities. However, he has not provided documentary evidence of new facts sufficient to establish his eligibility for the benefit sought. As we noted in our prior decision, his 2016, 2017, and 2018 convictions for public intoxication, battery on a peace officer and vandalism—offenses which occurred during the time he held U nonimmigrant status and constituted serious adverse factors in our discretionary determination—outweigh the positive and mitigating equities present in his case.

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[2] The Applicant contends that he was placed on court probation so there is no probation officer who can verify that he successfully completed his probationary sentences. Instead, he references section 1203.3 of the California Penal Code (Cal. Penal Code) which states that, "[i]n all probation cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall at the end of the term of probation or any extension thereof, be discharged by the court subject to the provisions of these sections." Cal. Penal Code § 1203.3 (West 2022).

[3] The record indicates that the Applicant was placed on summary probation for 24 months (starting in [redacted] 2018 and ending in [redacted] 2020).

Consequently, the Applicant has not demonstrated that he is eligible on motion to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The motion to reopen is dismissed.