



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21283516

Date: MAR. 22, 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 derivative “U” nonimmigrant status as the qualifying family member of a victim of qualifying criminal activity. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application) and dismissed the Applicant’s subsequent motion to reopen and reconsider. Thereafter, we dismissed the Applicant’s appeal, concurring with the Director’s adverse determination. The matter is now before us on a motion to reopen and reconsider. Upon review, we will dismiss the motions.

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). 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 as the time of the initial decision. 8 C.F.R. § 103.5(a)(3). 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 Mexico, was granted U-3 nonimmigrant status as the child of a victim of qualifying criminal activity from October 2014 to September 2018, and timely filed his U adjustment application in October 2017. The Director denied the application, concluding that the Applicant’s positive and mitigating equities were outweighed by the adverse factor of his criminal history such that a favorable exercise of discretion was not warranted. The Director also denied the Applicant’s motion to reopen and reconsider, determining that the Applicant did not submit new facts for consideration, establish that the previous decision was in error based on the evidence in the record at the time of the prior decision, or submit any pertinent precedent decision that the decision was based on an incorrect application of law or USCIS policy.

In our prior decision on appeal, incorporated here by reference, we acknowledged the Applicant's positive and mitigating equities including his lengthy residence in the United States, stable employment, payment of taxes, and LPR mother and LPR brother. Nevertheless, we concluded that the positive and mitigating equities were outweighed by his criminal record which includes a 2011 arrest and conviction for knowingly damaging property, and a 2019 arrest for child abuse and conviction for disorderly conduct, which occurred while he held U nonimmigrant status and after the filing of his U adjustment application requesting to reside in this country permanently as an LPR.

On motion, the Applicant contends that we erroneously denied his U adjustment application by failing to give sufficient weight to his positive and mitigating equities. Specifically, the Applicant, through counsel, points out that (1) the arrest and conviction for damaging property was over 10 years ago; (2) there is no indication that the Applicant was aware of or involved with the gun or marijuana found on another individual during the course of the arrest; (3) the child abuse charges were reduced to disorderly conduct; and (4) the striking of the child did not come out of a place of malice but by poor parenting style, which has been corrected by the Applicant taking parenting classes and the passage of time. In his personal statement, submitted on motion, the Applicant acknowledges that he has made mistakes in the past and takes full responsibility for them. The Applicant further asserts that he has rehabilitated and has overcome the mistakes he made in the past. In support of the positive and mitigating equities in his case, the Applicant submits six additional letters from his family, and his employer, as well as his 2020 income tax return. The Applicant's spouse explains that they became parents at the age of 15 and 16 and that, due to their parenting style differences and lack of knowledge, caused harm to their children. She asserts that they have become better parents. The other letters from family also assert that the Applicant has changed his temperament and character to be a better father for his children. His employer claims that he is a "great asset" and "it would be a great loss if he is unable to continue providing great service to" the company's clients and partners.

We acknowledge the Applicant's arguments and additional evidence of positive and mitigating factors in his case. However, our prior decision on appeal reflects that we considered the four points mentioned above, as well as the indicia of the Applicant's change in behavior and found them insufficient to establish that his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the severity and recency of the conduct that led to his arrests and convictions. As such, the facts and arguments on motion are cumulative to evidence already submitted and considered. Therefore, the Applicant has not provided documentary evidence of new facts sufficient to establish his 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. The Applicant's prior criminal offenses, including an arrest for child abuse and conviction for disorderly conduct during the time he held U nonimmigrant status, outweighs the positive and mitigating equities present in his case. 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.

FURTHER ORDER: The motion to reconsider is dismissed.