



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

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

In Re: 19043942

Date: MAY 03, 2022

Motion on an Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status

The Applicant seeks to become a lawful permanent resident (LPR) based on his “U” nonimmigrant status as a victim of qualifying criminal activity 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 to Register Permanent Residence or Adjust Status (U adjustment application), finding that the Applicant did not show adjustment of status was warranted on humanitarian grounds, to ensure family unity, or is otherwise in the public interest and thus, did not establish he should be granted a favorable exercise of discretion. We dismissed the Applicant’s subsequent appeal. The matter is now before us on a motion to reopen and reconsider. Upon review, we will dismiss the motion.

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). A motion to reopen is based on documentary evidence of new facts. 8 C.F.R. § 103.5(a)(3).

The applicant bears the burden of establishing their eligibility, section 291 of the Act, 8 U.S.C. § 1361, and must do so by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This burden includes establishing that discretion should be exercised in their favor, and USCIS may take into account all relevant factors in making its discretionary determination. 8 C.F.R. § 245.24(b)(6), (d)(11).

In previous filings with the Director and on appeal, the Applicant established the following positive and mitigating equities: his lengthy residence in the United States; medical concerns; hardship upon relocation to his home country of Honduras; strong community and family ties to the United States; and business ownership and payment of taxes in the United States. However, the Director concluded and we affirmed on appeal, in a decision we incorporate herein, that the positive and mitigating equities were outweighed by the adverse factors of the Applicant’s criminal and immigration history. Specifically named as issues of concern were the Applicant’s [redacted] 2004 arrest and charge of inflicting corporal injury on a spouse or cohabitant; a [redacted] 2008 expedited removal order; a September 2011 re-entry after deportation; and several arrests related to false impersonation and failure to pay a vehicle operator fine. Furthermore, in regard to the 2004 charges, the Applicant did

not provide the arrest report underlying the charge, so the events around the incident remained unclear. As a result, the Director found that the Applicant had not submitted sufficient evidence to establish that his continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that he warranted a positive exercise of discretion to adjust his status to that of an LPR.

On appeal, the Applicant submitted documentation of several failed attempts to obtain the arrest report from 2004. Still, the Applicant did not fully explain the specific circumstances giving rise to his arrest, failing to explicitly address why he was charged with inflicting corporal injury on a spouse or cohabitant. Moreover, we described further negative factors in the Applicant's case including a domestic dispute/battery arrest in 2007, disclosed on his Form I-918, Petition for U Nonimmigrant Status, and for which he claimed to have served five days of community service. In addition, the record established that the Applicant was convicted of false impersonation of another individual in 2007 for an incident occurring in 2005. He later violated his probation connected to this conviction and in 2012 was ordered to pay a fine. On appeal, the Applicant did not address or submit additional evidence relevant to this criminal history. We then affirmed the Director's decision and found that due to the Applicant's criminal and immigration history he had not met his burden of proof to establish that he warranted a positive exercise of our discretion to adjust his status to that of an LPR under section 245(m) of the Act.

On motion, the Applicant submits new evidence, including: his statement; a statement from his brother concerning his 2007 arrest; the 2004 arrest report; the criminal record from his 2005 arrest and 2012 probation violation; as well as information concerning his expedited removal, re-entry, and probation violation. We acknowledge the submission of court records regarding his 2005 arrest and 2012 probation violation, but they do not provide new information, confirming what has already been established on appeal. In addition, we also acknowledge the statement from the Applicant's mother explaining that he only left the United States, resulting in his probation violation, expedited removal, and illegal re-entry, to visit his dying father in Honduras. Nonetheless, the three most significant negative factors facing the Applicant- his 2004 arrest for inflicting corporal injury on a spouse or cohabitant, his self-reported 2007 domestic battery incident, and his conviction for false impersonation- remain. As we will detail below, the Applicant has not sufficiently established the facts of these events and the facts that are presented, weigh heavily in his disfavor, such that we will affirm our prior decision that the Applicant has not established, he merits a favorable exercise of discretion.

A. 2004 Arrest for Inflicting Corporal Injury on a Spouse or Cohabitant

On motion the Applicant contends that with the submission of the police report from this arrest and his new statement on the event, this incident should no longer be considered a negative factor. We disagree.

We recognize that the arrest report provided does not show in full clarity what occurred between the Applicant and his domestic partner. Still, it does indicate that there was an altercation between the Applicant and his domestic partner, which occurred in the presence of a teenage child (the domestic partner's daughter) and resulted in his domestic partner having redness to the right side of her face, concentrated in three specific circular areas near her cheek bone. Notably, the arrest report provides

two possible causes of the redness: the Applicant hit his domestic partner in the face, or the Applicant pulled a blanket from her body so forcibly that he caused her head to hit the ground. Either way, as police determined from observations at the scene and testimony given by the domestic partner and teenage daughter, the Applicant appeared to be the aggressor. We also recognize that the Applicant was found to have scratches on his hands and face, as well as redness on his neck, but the report indicates that his domestic partner caused these injuries in trying to defend herself from the Applicant. Lastly, the police observed that the domestic partner showed no signs of intoxication.

In his statement on motion, the Applicant provides an alternative narrative to the one observed by police and stated to police at the scene. For example, the Applicant describes his domestic partner as being intoxicated at approximately 1AM that day (the incident occurred at 5AM). The Applicant also asserts that he never hit his domestic partner and he believes his partner was jealous and her teenage daughter called police to retaliate against him for accusing her of stealing. The Applicant does not accept any (even partial) responsibility for the incident, nor does he explain the redness on his partner's face or other testimony given to police about his actions; instead, he blames the entire incident on his partner and her daughter. Thus, for these reasons, we find the events surrounding his 2004 arrest for inflicting corporal injury on a cohabitant remain a negative factor in his case.

B. 2005 Arrest and Charge for False Impersonation

The Applicant also explains, in his statement on motion, that in 2005 he was pulled over for a broken taillight and because he had no driver's license at the time, he gave his roommate's name to police. He describes how the police towed his car and he had to walk home. He also relates that he forgot he needed to appear in court to pay a fine until the issue resurfaced in 2007, when police arrested him following an incident with his girlfriend.

The Applicant emphasizes, as a mitigating factor, that during this encounter with police he did not show his roommate's driver's license, but only gave his roommate's name to police. However, this detail does not diminish the possible negative impact of the Applicant's actions and raises questions as to his character. The Applicant has not explained why he would provide his roommate's name when confronted by police and not his own, especially in the context of a driver's license not being presented. Thus, this incident remains a negative factor in his case.

C. 2007 Arrest and Claimed Domestic Dispute

On motion, the Applicant explains that his claimed 2007 arrest for a domestic battery/dispute was actually related to the false impersonation incident which occurred in 2005 and only coincidentally coincided with a dispute involving his girlfriend at the time. He asserts that he mistakenly believed he was being asked to report to the police station because of an incident with his girlfriend and only upon presenting himself to police did he discover he was then going to be arrested for the outstanding fine and failure to appear in court from 2005 for false impersonation.

The Applicant provides a statement from himself and his brother in support. He states that his girlfriend, who became the mother to his son a year later, arrived at his home intoxicated and yelling. He describes his girlfriend as a depressed person, who used alcohol and attempted suicide two weeks prior to the incident. He claims she grabbed a knife from his kitchen, so he left the house and when he

returned home, he found that his girlfriend had called the police and they had left him a card to call them. He states that when he called the police, they told him to come to the police station, so he complied. He explains further that when he arrived at the police station, he was arrested for the 2005 incident. The Applicant emphasizes that he was the victim of the domestic dispute and his arrest had nothing to do with the incident. In the brother's retelling, the Applicant's girlfriend was insulting the Applicant in another room, came into the kitchen where he was, and grabbed a knife. The brother reports that the Applicant saw his girlfriend with a knife and ran away. The brother also states that the girlfriend indicated she was going to kill the Applicant. He adds that he did not call the police because the girlfriend left the home after the Applicant ran away.

We acknowledge that the Applicant's record does not appear to show an arrest for a domestic dispute in 2007, however now that the Applicant has disclosed this domestic dispute to us, the full details of this incident must be provided for purposes of our discretionary analysis. The Applicant brought this incident to our attention when he indicated on his Form I-918, filed in 2011, that he had been arrested for a domestic battery/dispute in 2007, "possibly charged" for the offense, and that his punishment was five days of community service. Furthermore, the Applicant has not substantiated his claims that he was the victim of this 2007 incident with independent evidence nor has he explained why he believed he was arrested, charged, and punished for the event if he was the victim in the dispute. Notably, the Applicant has not provided the related police report or submitted evidence that he attempted to obtain the police report, but it was unavailable. Thus, given that the details provided about this incident are inadequate and some facts remain unclear, we are unable to ascertain if it should not be considered a negative factor in the Applicant's case.

In sum, the Applicant has not met the requirements of a motion to reconsider or a motion to reopen because he has not established that our decision was incorrect based on the evidence in the record of proceedings at the time of the decision or that new evidence demonstrates eligibility for the requested immigration benefit. The Applicant's lack of responsibility and explanation regarding the 2004 incident coupled with police observations, indicate this arrest should remain a strong unfavorable factor in his case. In addition, the use of his roommate's name when stopped by police and his failure to acknowledge wrongdoing in this regard is also a negative factor in his case. Then, his failure to provide sufficient details and corroborating evidence concerning the 2007 incident or explain why he thought he had been punished for domestic battery when he claims he was the victim, also weighs in his disfavor. Thus, these negative factors continue to outweigh the positive in the Applicant's case and we will affirm our previous decision that the Applicant has not shown he merits a favorable exercise of discretion. Again, as it is the Applicant's burden to show he warrants a favorable exercise of discretion, and he has not met this burden, we will dismiss the motion.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.