



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

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

In Re: 22022441

Date: SEPT. 6, 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 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-1 nonimmigrant status as a victim of an attempted murder who was helpful to law enforcement, and timely filed his U adjustment application in March 2017. The Director denied the application, concluding that the Applicant’s positive and mitigating equities were outweighed by the adverse factors 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 to establish 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 family ties, lengthy residence in the United States, employment history, payment of taxes, hardship to his relatives, and helpfulness to law enforcement. Nevertheless, we concluded that the positive and mitigating equities were outweighed by his lengthy criminal history, which includes a 2016 conviction for driving under the influence (DUI) while he held U nonimmigrant status.

On motion, the Applicant submits a brief. In the brief, the Applicant states that he understands the Director's reasoning for the unfavorable decision as it was due to his long criminal history but points out that "he amassed and continued to amass a series of positive equities following the approval of his U Visa," which includes finding a better job, becoming a major source of support for his family, and being a positive member of his community and job.

We acknowledge the Applicant's statements on motion. The facts and arguments on motion are cumulative to evidence already submitted and considered, and the Applicant has not provided documentary evidence of new facts sufficient to establish his eligibility.

In addition, our prior decision on appeal reflects that we fully considered the positive and mitigating equities mentioned above, including his family ties, lengthy residence in the United States, employment history, payment of taxes, hardship to his relatives, and helpfulness to law enforcement, 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 his DUI conviction. Specifically, we noted that although the Applicant complied with the conditions of his conviction and claimed he does not drink as much as he used to, 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, 209 (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"). Moreover, we noted that record does not sufficiently address the specific conduct, allegations, charges, circumstances, or events that culminated in his more than twelve arrests. We therefore found that the Applicant's prior criminal offenses, including his DUI conviction during the time he held U nonimmigrant status, outweighed the positive and mitigating equities present in his case. The Applicant has not established on motion 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. Consequently, the Applicant has not demonstrated on motion that he is eligible 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.