U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27548039

Date: AUG. 14, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

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 her "U" nonimmigrant status.

The Director of the Vermont Service Center denied the application, concluding that the record did not establish that the Applicant's adjustment of status was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 they meet all other eligibility requirements and, "in the opinion" of USCIS, their "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 their eligibility. Section 291 of the Act, 8 U.S.C. § 1361. 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). Where adverse factors are present, the applicant may submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.24(d)(11) (providing that "[w]here adverse factors are present, an applicant may offset these by submitting supporting 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 documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior 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). Our review on motion is limited to

reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

II. ANALYSIS

In our prior decision, incorporated here by reference, we reviewed the mitigating factors presented by the Applicant. We noted that the Applicant emphasized the hardship that she and her family members would experience if her U adjustment application is denied. In her previous statements in the record, the Applicant referenced being repeatedly targeted and recruited by gang members while living in Honduras, and the general violence against women and lack of rights in Honduras. She stated that a gang member in Honduras cut her face when she struggled against his attempt to force her to join him. At that point, the Applicant rarely left her house and fled to the United States to seek safety with her mother, who had arrived many years earlier. The Applicant detailed the hardship her daughter, whom she is raising by herself, would experience if she remained in the United States or moved to Honduras. The Applicant stated that her daughter has a rare genetic disorder which causes her to have a low bone mass and other conditions, has had 16 bone fractures and four operations, has metal rods in her legs and uses a wheelchair, attends physical therapy twice a week, receives intravenous infusions twice a year, and requires daily supervision. The Applicant stated that she has custody of her daughter as her daughter's father has a drug problem and cannot provide for her. The Applicant also cares for her anemic mother. The Applicant fears for her safety and her daughter's safety if they return to Honduras based on her past experience and current country conditions. Furthermore, the Applicant expressed concern for her daughter's well-being if she loses the Applicant as her caretaker in the United States or loses her specialized medical care if she relocates to Honduras. Lastly, the Applicant expressed remorse for her criminal activity and stated that she had not had a drink since the date of her arrest.

We weighed the detailed information above with the information regarding the Applicant's arrest in [redacted]2021, while she was in U-3 nonimmigrant status and her U adjustment application was pending, for operating under the influence, unlicensed operation of a motor vehicle, and miscellaneous ordinance/bylaw violation. She pled guilty in [redacted]2022 to operating under the influence of liquor pursuant to Massachusetts General Laws § 24(1)(a)(1). She was sentenced to 18 months of probation, which will not end until [redacted] 2023. The Applicant remains on probation as of the time of this decision. We informed the Applicant that in considering an applicant's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offenses. *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978). Further, 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 Siniauskas*, 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").

Finally, we concluded 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." *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991); *see also Matter of Marin*, 16 I&N Dec. at 588 (emphasizing that the recency of a criminal conviction is relevant to the question of whether rehabilitation has been established and that "those who have recently committed criminal acts

will have a more difficult task in showing that discretionary relief should be exercised on their behalf"). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which they were required to comply with court-ordered mandates, but also after 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"). Further, when an individual is on probation, they enjoy reduced liberty. *See, e.g., 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); *U.S. v. King*, 736 F.3d 805, 808-09 (9th Cir. 2013) ("Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled.") (internal quotations omitted).

On motion to reopen, the Applicant submits a brief, information regarding the Applicant's daughter's medical condition, a letter from K-A-[1] regarding the Applicant's substance abuse therapy, a letter from L-A-P- regarding a program that assists the Applicant and her daughter with housing and access to supportive devices, a letter from the Applicant's daughter's teacher, additional articles regarding country conditions in Honduras, and copies of evidence already included in the record. The Applicant does not assert that this evidence represents new facts, but rather that our previous assessment of the mitigating factors was not properly weighed.

In her brief, the Applicant contends that the letter from K-A- indicates that she does not have a substance abuse problem, and that her driving under the influence "was not the norm for her." Our prior decision did not contend that the Applicant had a substance abuse problem; however, we concluded that the Applicant's arrest and conviction for driving under the influence while her U adjustment application was pending was a significant adverse factor, that driving under the influence is a particularly serious crime, that the underlying facts of her arrest involved dangerous and unsafe behavior, and she put the safety of the public at risk. The letter submitted from L-A-P- notes that the Applicant is a loving mother who keeps a safe household for her disabled daughter. The letter from her daughter's teacher similarly indicates that she is supportive of her daughter and makes sure to make up schoolwork.

In reviewing the most recent decision, we determine that we provided a detailed accounting of the Applicant's mitigating factors, including the health of her daughter and mother and her fears of being forced to return to Honduras, which we do not seek to diminish. However, the evidence provided on motion does not overcome our prior conclusion that the Applicant's recent and serious criminal activity, combined with the fact that she remains on probation, are significant negative factors. The Applicant has not provided assertions to dispute our conclusions that her arrest and conviction for driving under the influence is a serious negative factor; however, she asserts that she does not have a substance abuse problem and reiterates her mitigating factors and contends that we did not properly weigh them.

[1] We use initials to protect the identity of individuals.

Although the Applicant has submitted additional evidence in support of the motion to reopen, the Applicant has not established that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that she warrants a positive exercise of our discretion to adjust her status to that of an LPR under section 245(m) of the Act. On motion to reconsider, the Applicant has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.