U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24645552

Date: FEB. 3, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status

The Applicant seeks to become a lawful permanent resident (LPR) based on his "U" nonimmigrant status 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 for Adjustment of Status of U Nonimmigrant (U adjustment application), concluding that a favorable exercise of discretion was not warranted. The Director subsequently dismissed the Applicant's motion to reopen and reconsider, concluding that he did not provide new facts supported by documentary evidence or establish that the 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. We dismissed the Applicant's appeal and first combined motion to reopen and motion to reconsider, again as a matter of discretion. The matter is now before us on a second combined motion to reopen and motion to reconsider. Upon review, we will dismiss the motions.

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 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, 375-76 (AAO 2010). This burden includes showing that discretion should be exercised in the applicant's favor. 8 C.F.R. §§ 245.24(b)(6), (d)(11).

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that our decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We must dismiss a motion that does not satisfy the applicable requirements. 8 C.F.R. § 103.5(a)(4).

In our July 2021 decision dismissing the Applicant's appeal, incorporated here by reference, we determined that he had not established that his continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest, as required by section 245(m)(1)(B) of the Act, because his history of arrests, convictions, and traffic infractions

outweighed his positive and mitigating equities and he had not demonstrated that he merited a favorable exercise of discretion. We noted that the Applicant was convicted of driving while ability impaired (DWAI) in 2015, an alcohol-related offense which posed a risk to others. Additionally, he was convicted twice of driving under restraint; once for driving under restraint – alcohol related; once for failure to display proof of insurance, twice for driving after revocation prohibited (habitual traffic offender); and once for driver's license-permit unauthorized minor. Additionally, we mentioned the Applicant's conviction for harassment in 2014, which was vacated in part on constitutional grounds and therefore is not considered a conviction for immigration purposes. We discussed that the Applicant's history of arrests, convictions, and citations, all of which occurred while he held U nonimmigrant status, showed a disregard for the laws of the United States and that the record contained insufficient evidence of his rehabilitation.

In our March 2022 decision dismissing his first combined motion to reopen and motion to reconsider, which is the prior adverse decision now at issue, we determined that the Applicant had not submitted new evidence or established legal error to overcome the determinations in our decision on appeal. We addressed his allegations that we mischaracterized his criminal history and improperly labeled traffic citations as arrests or convictions. We explained that we consider all relevant factors, including conduct that did not ultimately lead to a conviction, in making our discretionary determination. *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination and that it "will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of" certain classes of crimes). We discussed his assertion that we misapplied *Matter of Siniauskas*, 27 I&N Dec. 207, 208-09 (BIA 2018) in our discussion of his 2015 DWAI conviction. And we acknowledged the Applicant's completion of probation for his DWAI conviction, general expression of remorse, and cooperation with law enforcement after being the victim of a crime. But we noted that following the DWAI conviction he committed multiple serious traffic and driving violations, all in quick succession and while he held U nonimmigrant status, and that the favorable factors in his case did not outweigh the negative.

In support of his current combined motion to reopen and motion to reconsider, the Applicant submits a brief, the first substantive portion of which is nearly identical to the brief he submitted in support of his first combined motion to reopen and motion to reconsider. He repeats arguments from his prior brief that we mischaracterized his history of traffic citations as arrests or convictions and misapplied *Matter of Siniauskas*.[1] However, the Applicant does not now allege any error in our most recent decision on his first combined motion to reopen and motion to reconsider, as required for a motion to reconsider under 8 C.F.R. § 103.5(a)(3), but instead repeats past allegations that we erred in certain portions of our July 2021 decision on his appeal. He also does not submit any new evidence relating to his claims relating to the negative factors in his case, as necessary to meet the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2). We addressed the Applicant's assertions regarding our decision on appeal in our last motion decision. The Applicant does not provide new evidence or arguments on these points now, nor does he specifically allege that our discussion of the negative factors in our prior decision on his first combined motion was based on legal or factual error. Instead, he repeats a prior statement that "the USCIS officer made an incorrect application of law and policy, and that the decision was incorrect based on the evidence previously submitted to USCIS at the time of the initial filing for the U Visa, as well as the application for residence."

[1] The Applicant also made the same arguments in his brief on appeal.

With regard to the favorable and mitigating factors in his case, the Applicant adds a discussion to his brief about the humanitarian factors in his case, including his family ties, hardship his family would experience if he were removed, and medical issues relating to himself and his family members. He provides copies of previously submitted evidence; medical records for himself, his spouse, and family members living abroad; birth certificates of the two U.S. citizen children he shares with his spouse (he also has a third child from a past relationship); evidence that his spouse is pregnant and has experienced pregnancy-related complications in the past; evidence that his spouse lacks legal immigration status in the United States; financial records; driving records; photographs; letters of support; and articles relating to country conditions in Mexico. We have considered this evidence, but it is insufficient to outweigh the negative factors in this case and show that the Applicant merits a favorable exercise of discretion.

In our decision on appeal, we noted that the immigration status of the Applicant's spouse was not clear from the record. On motion, the Applicant now submits evidence that his spouse lacks lawful immigration status in the United States and that she, like the Applicant, is a citizen of Mexico. He provides a statement from his spouse describing the hardship she and their children would endure if the Applicant were required to return to Mexico. However, the Applicant's close relationship with, and role as a provider for, his spouse carries little weight due to her own lack of immigration status in this country. Additionally, the record shows that the Applicant's spouse has family members in Mexico, including her parents; lacks strong family ties in the United States aside from the Applicant, their children, and an aunt and uncle; and resided in Mexico until she was a teenager, at which point she chose to remain in the United States in order to pursue a relationship with the Applicant. We acknowledge that the Applicant now provides evidence that his spouse is pregnant with their third U.S. citizen child (the Applicant's fourth child) and that she has experienced medical difficulties with her past pregnancies. However, in our appeal decision we considered his relationship with his U.S. citizen children and the potential impacts to them if he were unable to adjust his status. The birth of an additional child does not change our determination that his family ties are insufficient, even when considered in conjunction with other evidence, to outweigh the negative factors in this case.

Furthermore, the Applicant and his spouse mention financial aid they send to relatives in Mexico. They submit a letter from the Applicant's brother in Mexico stating that he relies on financial assistance from the Applicant, as well as medical records relating to the Applicant's brother and father. However, the Applicant's role in supporting family members outside of the United States is not relevant to whether he has family ties in this country or that humanitarian factors warrant a favorable exercise of discretion to allow him to adjust status here. As for the other evidence he submits, we previously acknowledged the Applicant's own medical needs, finances, and family and community ties in the United States as favorable factors in this case. We recognize the statements he submits from family and friends attesting to his role in his family and good moral character, as well as the records showing his family's financial obligations and medical conditions. However, this evidence, when considered in the aggregate with the other documentation in the record, does not outweigh the negative factors in the Applicant's case.

The Applicant has not submitted new evidence sufficient to establish his eligibility for adjustment of status under section 245(m) of the Act. Moreover, he has not demonstrated any error of law or policy in our prior decision. Accordingly, he does not meet the requirements for a motion to reopen or reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.