U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24269708

Date: FEB. 13, 2023

Motion on Administrative Appeals Office Decision

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 her "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), finding that her adverse factors outweighed the positive and mitigating equities in her case and accordingly, did not warrant adjustment of status to that of an LPR as a matter of discretion. We dismissed the Applicant's appeal and then dismissed a motion to reconsider. The matter is now before us on a second motion to reconsider.[1] The Applicant submits new evidence and reasserts her eligibility for the benefit sought.[2] Upon review, we will dismiss the motions.

I. LAW

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 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought. 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).

II. ANALYSIS

The Applicant, a 56-year-old native and citizen of Mexico, was waived through the [redacted] California port of entry in 2010. In October 2014, the Director granted the Applicant U-1 nonimmigrant status. The Applicant timely filed the instant U adjustment application in September

[1] The Applicant indicated on the Form I-290B, Notice of Appeal or Motion that she was filing a motion to reconsider. However, she submitted additional evidence with the motion. Accordingly, we will treat the submission as a motion to reopen and reconsider our most recent decision despite her indication on the Form I-290B that she was only filing a motion to reconsider.

[2] The Applicant's counsel indicated in her cover letter that she enclosed a brief in support of the motion. However, no brief was enclosed.

2018. In September 2019, the Director issued a decision denying this application, concluding that the Applicant had not established that a favorable exercise of discretion was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. In May 2021, we dismissed the Applicant's appeal, noting that her [redacted] 2017 conviction, her inconsistent statements regarding the circumstances leading to the conviction, and her failure to take responsibility for her actions prevented us from determining the risk she posed to public safety and the extent to which she was rehabilitated. In February 2022, we dismissed the Applicant's first motion to reconsider, noting that it "did not establish legal error in our prior decision and had not shown that our decision was incorrect based on the record before us" as required. 8 C.F.R. § 103.5(a)(3). Specifically, we determined that the Applicant had not shown that our conclusion that her adverse factors outweighed the positive and mitigating equities was incorrect based on the law and USCIS policy in effect at the time. Accordingly, we concluded that the Applicant had 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.

On second motion, the Applicant asserts that she "is filing the present Motion to Reconsider the dismissal because [she] believe[s] the earlier motions were dismissed erroneously." We note however, that the Applicant's submission does not meet the requirements for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Specifically, it does not establish that our prior decision was based on an incorrect application of law or USCIS policy, or that our decision was incorrect based on the evidence in the record of proceedings at the time of the decision. Furthermore, the Applicant's new evidence does not meet the requirements for a motion to reopen as it does not state new facts supported by affidavits or other evidence.[3] Consequently, the Applicant has not met the requirements for a motion to reopen and reconsider, as specified in 8 C.F.R. §§ 103.5(a)(2) and (3), and the U adjustment application will remain denied.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

[3] The Applicant submits a copy of a court disposition record for her [redacted] 2017 citation, and letters of support from the president of [redacted] and her employer— facts and evidence that we previously considered in our May 2021 and February 2022 decisions.