U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22457168

Date: JAN. 3, 2023

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). We dismissed the Applicant's subsequent appeal and then later granted his motion to reopen and sustained his appeal. Subsequent to our determination, we received derogatory information concerning the Applicant's eligibility and issued a service motion to reopen. Upon review of the Applicant's response and supplementary information in the record, we withdrew our prior finding and dismissed the motion to reopen. The matter is now before us on a combined motion to reopen and reconsider.

On motion, the Applicant submits a brief and additional evidence. Upon review, we will dismiss the combined motion to reopen and reconsider.

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

As noted above, we received information based on an electronic analysis of the Applicant's fingerprints that he was arrested in [redacted] 2017 and again in [redacted] 2018 for domestic battery under section 243(e)(1) of the California Penal Code (Cal. Penal Code). We obtained the police reports and included them in the record. We gave the Applicant an opportunity to submit arguments or other relevant evidence to show that he merits a favorable exercise of discretion. In response, the Applicant submitted a court document demonstrating that neither arrest resulted in criminal proceedings and an

affidavit in which we determined the Applicant was not forthcoming about his use of force during both incidents. Specifically, we pointed out that the police reports stated that the Applicant pushed his girlfriend, S-P-,[1] and that he used "bodily force." In addition, we determined the Applicant did not sufficiently establish his rehabilitation. We therefore withdrew our prior determination to grant the Applicant's motion to reopen and to sustain his appeal.

Now, on a combined motion to reopen and reconsider, the Applicant argues that the police reports are unreliable, and he provides additional evidence of his genuine rehabilitation. In support of his assertions regarding the police reports, the Applicant submits declarations from himself, S-P-, and S-P-'s parents, where they deny the Applicant physically harmed S-P-. With regard to his rehabilitation, the Applicant submits a psychological evaluation, a verification letter for the [redacted] Training Program, and a verification letter from a hospital confirming his new daughter's birth. The psychological evaluation reports that the Applicant "has moved beyond a difficult history, and currently has the skills and maturity fundamental to a productive a[nd] stable adult life." The evaluation goes on to report that the Applicant's "family life meets his need for love and belonging" and describes the Applicant as "resilient and self-aware," with "several coping skills and strengths that he relies upon," and concludes that the Applicant's "efforts to redirect his life have been successful."

Moreover, the verification letter for the [redacted] Training Program indicates that the Applicant is getting training on warehouse logistics, cognitive life skills, workforce development, financial literacy, and OSHA certified hands-on forklift training. The letter further states that the Applicant attends the training 20 hours a week and once complete, he will receive his OSHA certified forklift certification, which is good for three years.

However, while the instant motion was pending, we again obtained the results from an electronic analysis of the Applicant's fingerprints that demonstrates that in [redacted] 2020, approximately six months after he filed the motion, he was arrested for inflicting corporal injury on spouse or cohabitant under section 273.5 of the Cal. Penal Code. We therefore issued a notice of intent to dismiss (NOID).

In response to our NOID, the Applicant explains he has pled guilty to false imprisonment under section 236 of the Cal. Penal Code and that he will be sentenced in [redacted] 2023. The Applicant contends this conviction does not render him inadmissible or deportable as it is not a conviction of a crime of domestic violence or an aggravated felony.

While we acknowledge the new evidence on motion provides positive factors in his case, we consider the Applicant's arrest for inflicting corporal injury to spouse or cohabitant and conviction for false imprisonment, which occurred after the instant combined motion to reopen and reconsider was filed, to be recent and serious. *See Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978) (explaining that in considering an applicant's criminal record in the exercise of discretion, we consider multiple factors including the "nature, recency, and seriousness" of the crimes). It is of particular concern that the crime of which he was convicted arises out of his [redacted] 2020 domestic violence arrest, as the U nonimmigrant program was created, in large part, to protect victims of domestic violence. *See* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007) ("In passing this legislation, Congress intended to

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

strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence . . . while offering protection to victims of such crimes."). Regarding his claim about the immigration consequences related to his false imprisonment conviction, we note that U adjustment applicants are not required to establish their admissibility, but that applicable regulations enable us to consider all relevant factors in making our discretionary determination. 8 C.F.R. § 245.24(b)(6), (d)(11). The record further indicates that the criminal proceedings remain ongoing as the Applicant will not be sentenced until [redacted] 2023.

Thus, we conclude that the record as a whole remains insufficient to establish that the positive equities in the Applicant's case outweigh the negative impact of his criminal history. Here, due to the nature, severity, and recency of the Applicant's 2020 arrest for inflicting corporal injury to spouse or cohabitant and conviction for false imprisonment, a crime for which his proceedings remain ongoing, the Applicant has not demonstrated that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that he warrants a positive exercise of our discretion. Consequently, the Applicant has not established 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.