U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23927067

Date: JAN. 10, 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 for Adjustment of Status of U Nonimmigrant (U adjustment application), and we dismissed the Applicant's subsequent appeal. The matter is now before us on a motion to reopen and reconsider. On motion, the Applicant submits a brief and additional evidence. Upon review, we will dismiss the motion.

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 law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. Id. at § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

A favorable exercise of discretion to grant an applicant adjustment of status to that of LPR is generally warranted in the absence of adverse factors and presence of favorable factors. Matter of Arai, 13 I&N Dec. 494, 496 (BIA 1970). Favorable factors include, but are not limited to, family unity, length of residence in the United States, employment, community involvement, and good moral character. Id.; see also 1 USCIS Policy Manual E.8(C)(2), https://www.uscis.gov/policy-manual (providing guidance regarding adjudicative factors to consider in discretionary determinations). However, where adverse factors are present, the applicant should submit evidence establishing mitigating equities. See 8 C.F.R. § 245.24(d)(11) (stating 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"). 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

In October 2014, the Director approved the Applicant's petition for U derivative status, and in July 2018, he filed the instant U adjustment application. In our prior decision dismissing his appeal, incorporated here by reference, we acknowledged the Applicant's positive and mitigating equities including his lengthy residence in the United States, his family ties, his education, and his history of employment and payment of taxes. However, we concluded that the positive and mitigating equities were outweighed by the Applicant's criminal history – a 2019 arrest for felony corporal injury of a spouse or cohabitant in violation of section 273.5(a) of the California Penal Code (Cal. Penal Code) and a related emergency protective order issued against him upon request by the victim.[1] We also noted that the Applicant did not address the Director's concern regarding taking responsibility for his role in the domestic violence incident, and therefore, we were unable to determine the extent to which he has taken responsibility for the domestic violence incident and thus determine the extent of his rehabilitation.

On motion, the reasserts his eligibility for adjustment of status and submits, inter alia, the following psychological documentation: (1) a March 2022 psychological evaluation, prepared by a licensed marriage and family therapy, regarding the Applicant's successful completion of anger and emotion management therapy; and (2) an undated evaluation of the Applicant conducted by a psychologist relating to three sessions attended by the Applicant in February 2021 and May 2021. The authors of both evaluations indicate that the Applicant does not pose a current or future threat of violence to others or exhibit signs related to risk factors that would make him more likely to offend and/or disturb his family.

We acknowledge the Applicant's submission of additional evidence of positive and mitigating equities as well as the findings in the psychological evaluations regarding the Applicant's rehabilitative efforts. To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which he or she was required to comply with court-ordered mandates, but also evaluate the applicant's conduct after he or she has satisfied all court-ordered and monitoring requirements.[2] Here, the fact that the Applicant was recently discharged from probation prevents us from assessing his behavior after the completion of his sentence and precludes us from fully evaluating whether or not he has rehabilitated. Further, as we noted in our prior decision, we consider the Applicant's criminal history, which involves conduct the U visa program was designed to protect against and occurring while he was in U status and in the pendency of his U adjustment, to be a significant negative factor. As such, the nature, recency, and seriousness of the Applicant's 2019 offense continues to outweigh the positive and mitigating equities present in his case.

The Applicant has not provided sufficient new evidence on motion to overcome our prior determination or established that our prior decision was based on an incorrect application of law or

[1] Court documents in the record indicate that the Applicant pled not guilty to domestic battery, in violation of section 243(e)(1) of the Cal. Penal Code, and agreed to attend a six-month domestic abuse program (DAP). The court records indicate that as part of this agreement, if the Applicant obeyed all laws during the DAP, and successfully completed the program, the charge against him would be dismissed. In [redacted] the charge against the Applicant was dismissed and the emergency protective order was terminated.

[2] An applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation. Matter of Roberts, 20 I&N Dec. 294, 299 (BIA 1991).

policy based on the evidence in the record of proceedings at the time of the decision. Consequently, the Applicant has not demonstrated 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.