



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 25151792

Date: MAR. 7, 2023

Motion of Administrative Appeals Office Decision

Form I-485, Application to 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 his “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), concluding that a favorable exercise of discretion was not warranted because the Applicant’s positive and mitigating equities did not outweigh the adverse factors in his case. We dismissed the Applicant’s appeal on the same basis. The matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motion.

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 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). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The issue before us is whether the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. In support of the instant motion, counsel for the Applicant submits a brief, which is similar to the brief submitted in support of the Applicant’s December 2021 appeal and contains arguments we considered and addressed in detail in our decision to dismiss the appeal. The Applicant also submits a declaration, an August 2022 declaration from a legal assistant detailing the efforts she made to obtain court documents or police records pertaining to his criminal history, a statement from his ex-partner, and copies of documents previously submitted. We find that the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

As we discussed in our decision to dismiss the appeal, the Applicant's positive equities include his long-term residence in the United States, his employment and tax records, home ownership, and his family ties. The Director also specified that the Applicant's assistance to law enforcement regarding the qualifying criminal activity committed against him and the clinical evaluation and the contents of the subsequent report were positive factors weighed in the Applicant's favor. We also acknowledged the hardships the Applicant and his family would experience were he unable to remain in the United States and letters in support from family members, friends, colleagues, and his employer attesting to his character and strong work ethic.

The adverse factors in this case relate to the Applicant's immigration and criminal history. As detailed at length by the Director and this office, the Applicant committed several immigration violations, including entering without permission or parole in 1994 and, after he was ordered removed in 1998, reentering the United States without permission or parole in 1998. The Applicant has been arrested or convicted for multiple crimes. Specifically, the Applicant was convicted twice for driving with a suspended license in 1996 and 1997. In addition, he was arrested for four domestic violence related offenses in a 20-month period from May 1996 to January 1998; three of the arrests led to convictions. The Director and this office addressed in detail evidence of the serious and violent nature of the incident resulting in the Applicant's 1998 conviction and "no contact" order. After his last domestic violence conviction in [REDACTED] 1998, the Applicant was ordered removed by an immigration judge but promptly reentered the United States later that year. The Applicant was again arrested in 2007 for noncompliance with the conditions of his sentence stemming from his 1998 conviction.

While we acknowledge the Applicant's statement on motion providing more detail about his arrests and expressing remorse and regret for his actions and the statement from the legal assistant detailing her efforts to obtain court documents or police records, we again conclude that the Applicant has not demonstrated that he merits a favorable exercise of discretion to adjust his status to that of an LPR. The Applicant was arrested six times between 1996 and 2008, four of which related to domestic violence incidents against his ex-partner. In his own statement on motion the Applicant details that in regard to the December 1997 incident that led to his arrest and conviction, he "pushed [his ex-partner] down several times" and he "believe[s] that [he] hit, dragged and choked her." In the August 2022 statement submitted on motion, the ex-partner asserts that "[w]e both hit and pushed each other" and the Applicant pulled her from her shirt "which caused me to choke." Although the ex-partner also contends that the Applicant "was drunk and responding to my aggression" and was "acting out of character," this information, as well as the Applicant's statement on motion, is consistent with the evidence already on the record concerning the violent conduct that resulted in the Applicant's conviction. In our prior decision, we found that based on this evidence, the Applicant's 1998 domestic violence conviction in particular was a significant negative factor.

In conclusion, the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. While we acknowledge the positive and mitigating factors in this case, including the new evidence submitted on motion, they are insufficient to outweigh the Applicant's criminal and immigration history, such that he has met his burden to establish that he warrants adjustment of status as a matter of discretion.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.