



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

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

In Re: 25172008

Date: MAR. 7, 2023

Motion on 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-3” 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. On motion, the Applicant maintains that he has expressed remorse and regret for his behavior that led to being arrested. He also contends that he has not been arrested or issued a citation since 2018, and has given up alcohol because he recognizes that alcohol “was the catalyst for all his arrests and there was no benefit to continuing to drink.” The Applicant asserts that this office “was incorrect to state that [the Applicant] has not shown remorse and ignored ample evidence in the record of his regret.” In support, the Applicant submits a March 2022 declaration, undated letters of support from family members and friends, and duplicate copies of documents previously submitted. We find that 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.

In our decision to dismiss the appeal, we determined that the Applicant had not established his continued presence was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest, given the nature, severity, and recency of the actions that lead to his three arrests and insufficient evidence of his remorse and rehabilitation for his recent criminal history. We detailed that the Applicant was arrested on two separate occasions for serious and troubling conduct involving being drunk in public or reckless driving also involving drinking. In addition, he was arrested for disorderly conduct after engaging in a violent, physical altercation attributed in part to him starting fights and breaking bottles while he was intoxicated. We agreed with the Director that the Applicant's recent criminal history after being granted U status to be of a sufficiently serious nature and evidencing conduct that posed a risk to public safety.

We also noted that in the Applicant's statements to the Director, he made general assertions that his arrests were not a reflection of who he was, and he apologized for the mistakes he made. He stated that he knew the charges were serious and he did not take them lightly. However, on appeal, the Applicant inconsistently claimed that his offenses were minor and often uncorroborated. Further, notwithstanding his claims of remorse, the Applicant's own statements reflected that he had not accepted responsibility for any of his criminal conduct, and instead, he continued to maintain that he was not culpable for the conduct underlying his arrests. In addition, despite evidence indicating that all of his arrests involved alcohol use, the Applicant did not address his past or current alcohol use or abuse reflected in his criminal history and what, if any, steps he has taken to address it. With respect to his 2018 arrest, the Petitioner also maintained he was not drunk despite evidence to the contrary from witnesses describing him as such and physical indicators of intoxication noted in the police report.

With the instant motion, the Applicant submits a declaration. He states that he sincerely regrets his past actions, contending that he made poor decisions and accepts responsibility for those choices. He also maintains that he has stopped drinking, and has not had alcohol in over a year. The Applicant states that he does not want to get arrested again, and his past does not represent who he is or who he wants to be. He explains that he is spending a lot of time with his girlfriend, her three children, his mother, and his sister; is attending church when he can; and is providing financial support to his family and his girlfriend.

As we acknowledged in our decision to dismiss the appeal, the favorable and mitigating factors in the Applicant's case include his significant and long-standing family connections to the United States; his financial assistance to his family; his dedication in raising his stepchildren; his steady employment working two jobs; his concern of returning to his native country since he left when he was 19 and does not have family there; and the fear of gang violence against him there. We also acknowledge the Applicant's declaration on motion expressing remorse and regret for his past actions which led to being arrested or issued citations and the letters in support submitted on motion from family members and friend, attesting to the Applicant's character, strong work ethic, and expressed regrets for the behaviors that led to his arrests.

However, notwithstanding these factors, the Applicant has not demonstrated on motion that he merits a favorable exercise of discretion to adjust his status to that of an LPR. As we detailed in our decision to dismiss the appeal and above, the Applicant was arrested on two separate occasions for serious and troubling conduct involving being drunk in public or reckless driving also involving drinking. In

addition, he was arrested for disorderly conduct after engaging in a violent and physical altercation while he was intoxicated. These incidents occurred while the Applicant was in U-3 nonimmigrant status. 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 history, such that he has met his burden to establish that he warrants adjustment of status as a matter of discretion.

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.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.