



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

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

In Re: 25530731

Date: MAY 19, 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 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 combined motion to reopen and reconsider. The matter is now before us on a second combined motion to reopen and reconsider. On second motion, the Applicant submits new evidence and reasserts her eligibility for the benefit sought. 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 47-year-old native and citizen of Mexico, last entered the United States without admission or parole in July 2011. In October 2013, the Director granted the Applicant U-1 nonimmigrant status. The Applicant timely filed the instant U adjustment application in December 2016. In June 2019, the Director issued a decision denying the 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 March 2021, we dismissed the Applicant’s appeal, noting that her [] 2015 conviction for one count of criminal possession of identification documents, her repeated use of a U.S. citizen’s identity to obtain a driver’s license, her multiple renewals of the driver’s license, and her failure to assume responsibility for her actions after

being investigated, amounted to serious negative discretionary factors in her case. In February 2022, we dismissed the Applicant's combined motion, concluding that she had not met her burden to establish that the positive and mitigating equities in her case outweighed the adverse factors such that she merited a favorable exercise of discretion. Specifically, we stressed that we could not look behind her [] 2015 conviction to reassess her guilt or innocence, despite her assertions on first motion that she did not possess A-A-'s¹ actual driver's license. We noted the Applicant's submission of copies of letters from the Internal Revenue Service (IRS) indicating that she did not file taxes prior to 2007 or use A-A-'s identity to file taxes. However, we gave the letters minimal weight as they would not result in any findings because the individual taxpayer identification number (ITIN) and social security number used to request them were assigned to the Applicant in 2010 and 2012. Finally, we also noted the Applicant's additional evidence of positive equities submitted on motion, but concluded that she had not established legal error in our prior decision and had not sufficiently addressed the aforementioned concerns.

A. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). Generally, a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. A motion to reconsider is based on the existing record and applicants may not introduce new facts or new evidence relative to their arguments. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006).

On second motion, the Applicant again contends that she did not possess A-A-'s actual driver's license when she obtained a driver's license in 2003. She emphasizes that the *Complaint and Information* and *Motion to Dismiss Counts 1 thru 15* from the Denver County Court confirm that she never possessed A-A-'s actual driver's license. We note however, that the *Motion to Add Count Sixteen* specifically states that, "[the Applicant] unlawfully, knowingly, and feloniously *had in her possession or under her control an actual driver's license*. . . of [A-A-]. . . in violation of section 18-5-903.5(1), (2)(b), C.R.S." (emphasis added). The Applicant pled guilty to this charge and, as we stated in our prior decision, we cannot go behind the conviction to reassess her guilt or innocence. *See Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1974). Based on the foregoing, the Applicant has not established that our prior decision was based on an incorrect application of law or policy.

B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. 103.5(a)(2). We interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. With the instant motion, the Applicant submits updated affidavits from herself and her former attorney, a copy of a letter from the IRS, a copy of IRS tax transcripts from 2000 to 2012, and a copy of business search results from the Colorado Secretary of State for []. In his affidavit, the Applicant's former attorney details his representation of the Applicant during the DMV investigation and criminal proceeding. He states that, "it is [his] understanding that [the Applicant's]

¹ Initials are used to protect the individual's privacy.

greencard [*sic*] had been denied in part based on her failure to admit wrongdoing at the time of the DMV investigation, as well as the belief that she actually possessed a driver's license of another person to explain the plea agreement." He states that he advised the Applicant to refrain from making any incriminating statements, and she should not be further punished for pursuing a sound criminal defense. In her own statement, the Applicant admits that she used A-A-'s personal information to obtain a driver's license she needed for her job at a local janitorial company. However, she maintains that she believed the social security number she purchased was fictitious and did not belong to an actual person. She states that she did not file taxes between 2003 and 2006 using A-A-'s social security number because she was paid in cash. She also details the efforts she made to obtain proof of said fact from the IRS to no avail. Additionally, the Applicant submits IRS tax transcripts from 2000 to 2012 based on the social security number she obtained in 2012. However, as we noted in our prior decision, the IRS requests cannot be given significant weight as the identifying information namely, the social security number obtained in 2012, would not have matched the identity the Applicant was using at the time. Moreover, while the Applicant's additional evidence further explains her use of A-A-'s personal information and the circumstances leading to her arrest, it does not provide sufficient new facts, and does not overcome our previous decisions regarding the gravity of her criminal history. As a result, we will also dismiss the motion to reopen.

III. CONCLUSION

The Applicant has not demonstrated, by a preponderance of the evidence, that her adjustment of status to that of an LPR is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest, as she has not established legal error in our prior decision and has not provided new facts on motion to establish that she meets this requirement.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.