U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27547846

Date: AUG. 15, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Register Permanent Residence or 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 application, concluding that the record did not establish that the Applicant's adjustment of status was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

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). Upon review, we will dismiss the motions.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if they meet all other eligibility requirements and, "in the opinion" of USCIS, their "continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." Section 245(m) of the Act. The applicant bears the burden of establishing their eligibility. Section 291 of the Act, 8 U.S.C. § 1361. This burden includes establishing that discretion should be exercised in their favor, and USCIS may take into account all relevant factors in making its discretionary determination. 8 C.F.R. §§ 245.24(b)(6), (d)(11). Where adverse factors are present, the applicant may submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.24(d)(11) (providing 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").

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 prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these

requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

II. ANALYSIS

In our prior decision, incorporated here by reference, we reviewed the mitigating factors presented by the Applicant. We noted that the applicant has an LPR spouse and United States citizen children. We acknowledged the Applicant's documentation regarding the developmental delay of one of his children and considered that a positive discretionary factor, along with the Applicant's statements of the dangers of returning to Mexico. We also recognized the original determinations in the Director's decision that the Applicant had shown employment and payment of taxes; however, we ultimately concurred with the Director's determination that the Applicant's criminal history outweighed his positive mitigating factors, and concluded that the Applicant had not established by a preponderance of the evidence that his adjustment of status was warranted on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

The record reflects that the Applicant filed his Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application) in January 2017. The Applicant, in response to a request for evidence (RFE) issued by the Director, provided documentation of four arrests: (1) Underage drinking and driving in [redacted] Minnesota in 2007; (2) Driving While Intoxicated (DWI) in [redacted] Minnesota in 2010, which led to a conviction and a sentence of one month of house arrest and four years of probation; (3) Aggravated Robbery in [redacted] Minnesota in 2013, which led to a dismissal; and (4) Disorderly Conduct (filed as domestic assault – misdemeanor – intentionally inflicts/attempts to inflict bodily harm on another) in [redacted] Minnesota in 2018, resulting in a conviction for disorderly conduct and a sentence of one year of probation. We informed the Applicant 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. *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978). We determined that the Applicant's 2010 conviction for DWI showed that he poses a risk to public safety that is not inherent in other types of offenses. *See Matter of Siniauskas*, 27 I&N Dec. 207, 208 (BIA 2018) (citations omitted) (holding that in determination of whether nonimmigrant is danger to community in bond proceedings, driving under influence is significant adverse consideration); *Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (discussing "reckless and dangerous nature of the crime of DUI"). The 2010 DWI conviction was also weighed more heavily when considering that he had been arrested for a DWI in 2007, albeit as a minor, and it was not therefore the first time he drove while intoxicated. In addition, the Applicant's most recent 2018 arrest and conviction for disorderly conduct, which stemmed from a violent domestic dispute, occurred after he was granted U nonimmigrant status in May 2013, and after he filed his U adjustment application in January 2017.

We also determined that the Applicant had not provided probative testimony regarding his rehabilitation, and further noted that the Applicant had been arrested for driving under the influence on multiple occasions, and while he acknowledged that he had issues with alcohol, had a subsequent arrest in 2018, while his U adjustment application was pending, where the record reflects that he admitted consuming alcohol and throwing a beer bottle at his wife. An applicant for discretionary relief with a criminal record must also ordinarily present evidence of genuine rehabilitation. *See Matter of Roberts*, 20 I&N Dec. 294, 298 (BIA 1991). Rehabilitation includes the extent to which an

applicant has accepted responsibility and expressed remorse for their actions. *See Matter of Marin*, 16 I&N Dec. at 585; *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 304-5 (BIA 1996). As a result, we determined that the Applicant had not demonstrated that he merits a favorable exercise of discretion to adjust his status.

With his motion to reopen, the Applicant submits a brief; an updated personal statement; evidence of home ownership; documentation from his child's school; an article regarding the trauma caused by the separation of children and parents; evidence of his registration for the United States Selective Service; letters from his wife, sister, and daughter; an unsigned Form 1040, U.S. Individual Tax Return from 2020; a pay statement from his wife's employment; copies of identification documents from his family members; and evidence already included in the record.

In the Applicant's updated personal statement, he discusses his relationships with his family members, including his stepson, two children, and his wife, and the impacts they would feel should he be removed from the United States, or his family relocate to Mexico with him. He further notes that he is "sorry for the harm" he caused as a result of drinking and doesn't want his family to fear him. He states that he has "learned how dangerous it is to drink too much" and that he knows he could end up hurting someone, including those who love him. Lastly, he states that he completed all the conditions of his disorderly conduct conviction, including a domestic violence program, and that he asked for forgiveness from his wife and children. In the letter from his sister, A-V-C-[1], she states that the Applicant is an honest and hardworking man and always goes out of his way to help someone in need. In the letter from his wife, M-C-B-, she states that the Applicant has "had many mistakes" but that he has tried to change for her and their children. M-C-B- asserts that the Applicant is "not a bad person all the mistakes he made have been caused by alcohol something he is overcoming." The remaining new evidence has also been considered, and is provided minimal positive weight, as it does not fully resolve the concerns presented in our prior decision, namely that the Applicant has a significant criminal history and has not demonstrated rehabilitation.

In his brief, the Applicant reiterates his family ties in the United States: his LPR spouse, parents, and sister; his two United States citizen children; and another sister with Deferred Action for Childhood Arrivals status. The Applicant asserts that the new evidence he has provided on motion should result in a reopening of his case. However, in review of our previous decision, we conclude that the Applicant's positive and mitigating factors continue to be outweighed by his serious criminal history.[2] In our previous decision, we noted the Applicant's family ties as positive factors, including the evidence of the developmental delay suffered by one of his children. While the Applicant submits a new statement on appeal acknowledging the damage he could have caused while driving under the influence, and his spouse claims that he is trying to overcome his issues with alcohol, the Applicant does not state that he has stopped drinking or tried to receive treatment to help him address his issues with alcohol. Further, the letters from A-V-C- and his daughter do not address the Applicant's

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

[2] We also note that a review of the Applicant's fingerprint response indicates that he was arrested on [redacted] 2021, following the filing of his appeal, for domestic assault in [redacted] Minnesota. The record indicates that the charges were not prosecuted; however, the Applicant has not disclosed this additional arrest with his motion. While we do not have the documentation from this arrest, and do not expressly rely on this information in the dismissal of his combined motions, the existence of an additional arrest, undisclosed by the Applicant, supports our determination that the Applicant has not rehabilitated from his past criminal conduct.

rehabilitation or criminal history. While we do not seek to diminish the hardships that may result from the denial of his U adjustment application, we again conclude that the Applicant has not overcome our prior determination that his criminal history outweighs the positive factors presented in his case, and as such, he has not demonstrated that he merits a favorable exercise of discretion to adjust his status.

With the Applicant's motion to reconsider, he reiterates his position that he has submitted satisfactory evidence to indicate that he warrants a positive exercise of discretion; however, he does not support his assertions with any policy or pertinent precedent decisions to indicate that our determination was based on an incorrect application of law or policy at the time we issued our decision. The Applicant claims that we should have given more weight to the evidence of his family's hardships than we had in our prior decision.

Although the Applicant has submitted additional evidence in support of the motion to reopen, the Applicant has not established 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 she warrants a positive exercise of our discretion to adjust his status to that of an LPR under section 245(m) of the Act. On motion to reconsider, the Applicant has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.