U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27612012

Date: AUG. 25, 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 derivative "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), 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 on the same basis and the matter is now before us on a motion to reconsider.

Upon review, we will dismiss the motion.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

As previously discussed, 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. Applicants bear the burden of establishing their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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, an applicant may offset these by submitting supporting documentation establishing mitigating equities they wish USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate. 8 C.F.R. § 245.24(d)(11).

The record reflects that in 2012 and 2014 the Applicant was arrested and charged with domestic battery on his spouse. He was subsequently granted U-2 nonimmigrant status as his spouse's derivative. In 2019 the Applicant was convicted of failure to stop at a stop sign.

In our previous decision, which we incorporate here by reference, we concluded that the Applicant did not meet his burden of proof to establish that a favorable exercise of discretion was appropriate in his case, because he did not explain the circumstances of his arrests, and he did not submit the related police reports, which the Director specifically requested. We acknowledged that the Applicant was not convicted of either domestic battery charge but explained, referencing *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988), that reliance on an arrest report in adjudicating a request for discretionary relief was appropriate, even in the absence of a criminal conviction. We also acknowledged the Applicant's statements denying any wrongdoing and attributing the 2012 arrest and resulting domestic battery charge to his spouse's pregnancy and mental state, as well as his assertions that the arrests were not recent. Nevertheless, we determined that because the Applicant did not submit the requested evidence concerning the arrests aside from his own statement that he and his spouse were arguing and "nothing had happened," the record did not establish the extent to which he had been forthcoming with USCIS about his underlying behavior and accepted responsibility for his actions and, thus, whether he had shown genuine rehabilitation. We recognized that there were some positive factors in the case, including the Applicant's long-time residence and family ties in the United States, his consistent employment, and school enrollment, but ultimately decided that they did not sufficiently mitigate his criminal history, the lack of arrest reports or similar documentation describing the circumstances of his arrests, and inadequate information about the reasons the charges against him were not prosecuted.

On motion, the Applicant submits a statement reiterating that the 2012 and 2014 domestic battery charges against him were never filed in court, and that he had no interactions with law enforcement since he was granted U nonimmigrant status in 2017.[1] He also submits a letter of support from his spouse and an unsigned letter from another individual, who appears to be living in his home.[2]

The Applicant asserts that we erred as a matter of law in denying his U adjustment application, because he previously explained the circumstances that led to his arrests for domestic battery and, although he could not obtain police reports for either arrest, he submitted evidence that the resulting charges were never prosecuted. He avers that in dismissing his appeal we improperly relied on *Matter of Grijalva*, because unlike *Grijalva*, his case does not involve an arrest that resulted in a conviction. Rather, he argues that pursuant to *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995), different weight should be afforded to an arrest which results in a conviction than to an arrest which does not,[3] and USCIS lacks authority to presume guilt or criminal culpability of an applicant where there is no evidence of conviction. He states that consequently his two arrests for domestic battery should have been given less weight than criminal convictions.

We agree that arrests which did not result in a conviction may be accorded less weight in a discretionary analysis, but this does not mean that we may not consider them as adverse factors in

[1] We note that the Applicant was convicted of failure to stop at a stop sign in 2019.

[2] The Applicant previously provided a letter of support from this individual.

[3] In *Arreguin*, the Board of Immigration Appeals gave "little weight" to the old arrest report for alien smuggling because the respondent was never prosecuted and denied any wrongdoing at her immigration hearing, and there was no evidence corroborating the allegations in the report.

determining whether an applicant merits U adjustment as a matter of discretion. To the contrary – "evidence of unfavorable conduct, including criminal conduct which has not culminated in a final conviction" may be considered in adjudicating discretionary relief. *Matter of Thomas*, 21 I&N Dec. 20, 23-25 (BIA 1995); *see also Sorcia v. Holder*, 643 F.3d 117, 126 (4th Cir. 2011) (stating that *Arreguin* "did not indicate that it was per se improper to consider an arrest report"); *Avila-Ramirez v. Holder*, 764 F.3d 717, 725 (7th Cir. 2014) (clarifying that the court did not read *Arreguin* "to prohibit any consideration of arrest reports in the weighing of discretionary factors.").

Here, because the Applicant was arrested for domestic battery on two separate occasions, evidence concerning his underlying conduct, character, reformation, and rehabilitation is necessary to determine whether there are any mitigating circumstances and, thus, whether a favorable exercise of discretion is appropriate notwithstanding his criminal history. *See Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (finding that a police report may be helpful in determining whether a favorable exercise of discretion is warranted, because it bears on the issue of the individual's conduct at the time of arrest, and this in turn is germane to whether that individual merits discretionary relief).

As discussed in our previous decision, although the Applicant provided a statement indicating that his spouse's pregnancy and depression led to his 2012 arrest for domestic battery, he did not address the circumstances of his 2014 arrest. He also did not provide police reports for those arrests, nor did he show that they were unavailable or could not be obtained. He also did not submit evidence to establish the reasons for the dismissal of the charges against him. We acknowledge the Applicant's statement on motion that he could not obtain police reports for either arrest; however, as the record does not contain confirmation from the arresting agency that such reports do not exist, he has not overcome our previous determination that in view of his criminal history and lack of evidence to establish the circumstances of his arrests, the reasons the resulting charges were not prosecuted, and the extent to which he has been rehabilitated, the positive equities in his case are not sufficient to warrant a favorable exercise of discretion.

Based on the above, we conclude that the Applicant has not demonstrated that we erred as a matter of law or USCIS policy in dismissing his appeal on those grounds or that our decision was otherwise incorrect based on the evidence in the record at the time it was issued. He therefore has not established a basis for reconsideration of that decision.

Lastly, we acknowledge the two letters indicating the Applicant's unresolved immigration status has negatively affected him and his family; however, the Applicant has not established legal error in our prior decision and has not cured the evidentiary deficiencies regarding his criminal history and rehabilitation. Consequently, he has not demonstrated on motion that he merits U adjustment in the exercise of discretion. His appeal therefore remains dismissed and his U application remains denied.

ORDER: The motion to reconsider is dismissed.