U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26844380

Date: JUNE 23, 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" 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. As will be discussed in detail below, the matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motion.

I. JURISDICTION

The first issue to be addressed is whether the Administrative Appeals Office (AAO) has jurisdiction over the matter at hand. As discussed above, the Applicant's U adjustment application was denied in June 2019 and in May 2021, this office dismissed the Applicant's appeal. The Applicant submitted a combined motion to reopen and reconsider in June 2021. In the brief in support, the Applicant stated that he was submitting the motion to reopen "for new evidence not previously available" and the motion to reconsider "based on several misconceptions when the evidence was examined by the AAO that ultimately affected an adverse finding and dismissal of his appeal." Because the Applicant referenced the U adjustment application receipt number, the date of the U adjustment application denial, and the Vermont Service Center as the office that issued the adverse decision, on the Form I-290B, Notice of Appeal or Motion, the Director adjudicated the combined motion by dismissing it as untimely. Subsequent motions submitted by the Applicant were also dismissed by the Director on the same or related grounds.

Pursuant to section 8 C.F.R. § 103.5(a)(ii), the office having jurisdiction for motions to reopen or reconsider "is the official who made the latest decision in the proceeding." In this instance, this office had jurisdiction over the Applicant's June 2021 motion to reopen and reconsider, as this office had made the latest decision in the proceeding when we dismissed the Applicant's appeal in May 2021. Therefore, as the Applicant's June 2021 combined motion to reopen and reconsider was within our jurisdiction, we will now adjudicate the Applicant's December 2022 appeal as a combined motion to reopen and reconsider.

II. MOTION TO REOPEN

The second issue before us is whether the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal. We find that the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

In our decision to dismiss the appeal, which we incorporate here by reference, we considered the favorable factors in the Applicant's case but concluded that the Applicant had not demonstrated that he merited a favorable exercise of discretion to adjust his status to that of an LPR. We determined that the Applicant's [redacted] 2016 arrest and subsequent conviction for DWI while in U status was both a serious crime and a significant adverse factor relevant to our consideration of whether the Applicant warranted a favorable exercise of our discretion, as DUIs pose a risk to public safety that is not inherent in other types of offenses. Moreover, although we acknowledged that the charge was ultimately dismissed, the Applicant's [redacted] 2016 arrest for the crime of assault while in U status was also viewed as a negative factor and representative of a public safety concern. We also agreed with the Director that the Applicant had not submitted sufficient evidence of rehabilitative efforts to indicate that he had made substantive changes to his behavior. Finally, we determined that a review of the Applicant's statement did not show any real expression of remorse, genuine or otherwise, for his two DWI convictions for driving under the influence of alcohol as well as his other arrests both prior to and during the time he held U nonimmigrant status.

With the instant motion, the Applicant asserts that he merits a favorable exercise of discretion. In support, he submits documentation to establish that his LPR brother has been diagnosed with kidney disease and is unable to work and thus relies on the Applicant for financial and emotional support. In addition, the Applicant submits evidence of the [redacted] 2020 birth of his U.S. citizen son. The Applicant also provides documentation establishing that his spouse has been granted U-1 status as the victim of a domestic violence from a former partner and is residing in the United States with the Applicant. The motion also contains a letter from the Applicant's employer confirming his long-term employment, his promotions within the company due to his "strong work ethic," and his involvement with his family and his church. The record also contains a letter from the Applicant's pastor, confirming his attendance at mass every Sunday since 2015, and his involvement in many activities in the community in benefit of "the needed people." The Applicant also submits a letter from a licensed clinical addiction specialist confirming that he has been rehabilitated and conducts himself as a law-abiding person.

The motion to reopen also contains an affidavit from the Applicant's spouse regarding the Applicant's active involvement in the family. She further states that she has never considered the Applicant to have a drinking problem; nor has he ever assaulted her or his four stepchildren. The Applicant's

spouse also contends that the Applicant is the main financial provider for the family and she and the children need his daily care and support.

In his own affidavit submitted on motion, the Applicant details his arrest history and expresses regret for not having "made the best decisions in the past." He further contends that he no longer drinks alcohol, works 60 to 65 hours a week with the same employer that he has been working with for over 18 years, financially supports his family of five children, attends church, and does work for the community. He admits that he is "flawed and ha[s] made mistakes" but is "growing and becoming a better man." The Applicant asks that he be given a chance to live in the United States with his family and prove that his "past does not define who I am now and I have potential."

As we acknowledged in our decision to dismiss the appeal, the favorable and mitigating factors in the Applicant's case include his victimization and assistance to law enforcement, lengthy residence in the United States, family ties, history of employment, some evidence of payment of taxes, the Applicant's financial support of his family, and the submitted testimonials from friends, co-workers, and family. We also afford favorable weight to the Applicant's affidavit on motion expressing remorse and regret for his past actions and stating that he no longer drinks alcohol; his church membership; the birth of his U.S. citizen child; his gainful employment and work ethic; and the hardships his family members, including his spouse, children, and brother, will experience if he is unable to remain in the United States.

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 detailed by the Director and this office, criminal conviction documents in the record indicate that the Applicant was arrested and convicted on two (2) separate occasions for Driving While Intoxicated (DWI), in 2007 and 2016. Furthermore, the Applicant's background check revealed numerous charges, including three counts for operating a motor vehicle without a license in 2004, 2005, and 2006; a 2009 arrest for breaking and entering and larceny after breaking and entering; a 2012 arrest for failure to disperse on command and resisting a public officer; a 2012 arrest for maintaining a vehicle/dwelling/place for controlled substance manufacture of cocaine and marijuana; and a 2016 arrest for assaulting a female. The Applicant's arrest history spans many years, and notably, two of his most serious arrests, for DWI and assaulting a female, occurred while the Applicant was in U-1 nonimmigrant status.[1]

The evidence submitted with the motion to reopen does not overcome our prior finding and the Applicant has not provided new facts to establish that we erred in dismissing the appeal. While we acknowledge the positive factors in this case, as detailed in our previous decision and above, the new evidence submitted on motion does not sufficiently impact the nature, recency, and seriousness of the Applicant's criminal history, such that he has met his burden to establish that he warrants adjustment of status to that of an LPR as a matter of discretion. Therefore, the motion to reopen must be dismissed.

III. MOTION TO RECONSIDER

The third issue before us is whether the Applicant has established 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

[1] The Applicant was granted U-1 nonimmigrant status from October 1, 2014 through September 30, 2018.

the record of proceedings at the time of the decision. We find that the Applicant has not established 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.

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.

In support of the instant motion to reconsider, the Applicant contends that our decision to dismiss the appeal failed to place sufficient weight on the "31 letters of support submitted on the Applicant's behalf." In addition, the Applicant asserts that we erred when we determined that the record did not contain sufficient evidence of rehabilitation concerning alcohol abuse. The Applicant contends that his wife's affidavit and the letters of support provided by people that know him should have sufficed to establish that he has bene rehabilitated. The Applicant also maintains that we erred when we determined there was a discrepancy between the Applicant's statement that he never hit his girlfriend in 2016 and the Magistrate's Order stating that there was probable cause to believe that the Applicant grabbed a woman by the arm and hit her in the face with her cell phone. He contends that he "did grab her arm as they struggled" and a "phone accidentally hit her" but as it was an accident; the charges were ultimately dropped. As for our finding that "the DWI/SA Assessment Interview document performed by the Applicant's counselor and submitted on appeal provides an inconsistent summary or lack of full understanding of the Applicant's history of alcohol-related offenses, " the Applicant maintains that it was "an error of reading the contents of evidence in the record."

The Applicant's contentions in the current motion merely reargue facts and issues we have already considered in our previous decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision"). We will not re-adjudicate the petition anew.

The Applicant has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

IV. CONCLUSION

The Applicant has not demonstrated 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 he warrants a positive exercise of our discretion to adjust his status to that of an LPR under section 245(m) of the Act. The underlying application remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.