



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

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

In Re: 27988121

Date: OCT. 11, 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 her “U” nonimmigrant status.

The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), concluding that the record did not establish that the Applicant had not unreasonably refused to provide assistance in the prosecution of the underlying criminal act. 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 grant the motion and remand the matter for further proceedings.

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).

On motion, the Applicant submits a letter from the County Office of the State Attorney (state attorney) dated March 28, 2023, which indicates that the Applicant “was cooperative throughout this case.” The Petitioner asserts that these new facts establish eligibility, as the letter satisfies the requirement to demonstrate continued assistance in the prosecution of the criminal activity.

As we noted in our original decision, an applicant for adjustment of status based on U nonimmigrant status must meet the regulatory requirements laid out at 8 C.F.R. § 245.24(b)(5) and demonstrate that she has not unreasonably refused to provide assistance in the investigation or prosecution of qualifying criminal activity. An applicant may meet this burden, as specified in 8 C.F.R. § 245.24(e), by providing a “document signed by an official or law enforcement agency that had responsibility for the investigation. . . affirming that the applicant complied with (or did not unreasonably refuse to comply

with) reasonable requests for assistance.” In this case, the Petitioner was the victim of an armed robbery; a criminal case was then initiated in the [] County Circuit Court. The Applicant has submitted documents, including a deposition notice and probable cause finding, which confirm that the state attorney was responsible for the criminal prosecution. Therefore, the state attorney’s affirmation of the Applicant’s continued cooperation is sufficient to satisfy the continued helpfulness requirement for adjustment of status.

Our prior decision was based on the lack of evidence of continued helpfulness, as was the Director’s original denial. The Director did not make findings regarding the remaining eligibility criteria outlined in section 245(m) of the Act and in 8 C.F.R. § 245.24. We will remand to the Director for initial consideration of these eligibility factors and for a determination of whether the Applicant merits adjustment of status as a matter of discretion.

Because the Applicant has established eligibility on motion to reopen, we need not address the arguments presented on motion to reconsider. The motion to reconsider is moot.

ORDER: The motion to reopen is granted and the matter remanded for entry of a new decision consistent with the foregoing analysis.

FURTHER ORDER: The motion to reconsider is dismissed.