

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28471837 Date: OCT. 30, 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 derivative "U" nonimmigrant status. The Director of the Nebraska Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), finding that the Applicant's 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. The matter is now before us on a motion to reopen. Upon review, we will dismiss the motion.

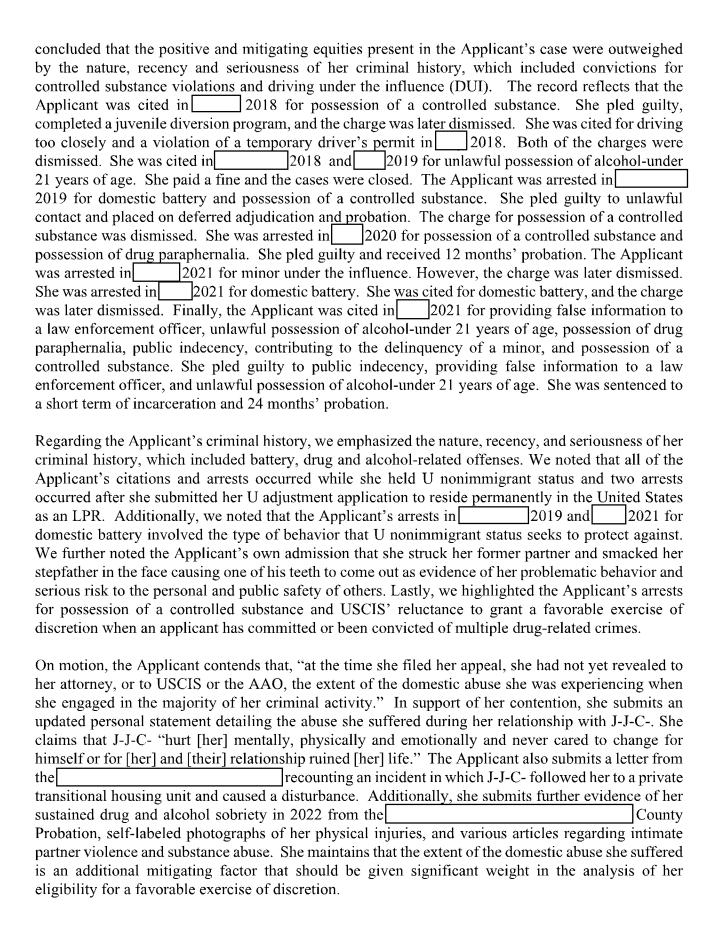
I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The burden of proof is on the applicant to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was granted U-3 nonimmigrant status as the child of a victim of qualifying criminal activity from 2017 to 2021, and timely filed her U adjustment application in April 2021. The Director determined that the Applicant's criminal record, which included controlled substance and domestic violence-related charges she accrued while in U nonimmigrant status, weighed heavily against a favorable exercise of discretion. Accordingly, the Director denied the application, concluding that the Applicant's positive and mitigating equities did not outweigh the adverse factors in her case.

In our prior decision on appeal, incorporated here by reference, we acknowledged the Applicant's positive and mitigating equities, including her family ties to the United States, her lengthy residence in the country since childhood, stable employment, and recent sobriety. Additionally, we acknowledged letters from relatives, teachers, coworkers and friends attesting to her good moral character and close relationship with her LPR mother and U.S. citizen brother. Nevertheless, we



Upon review, however, the record reflects that we considered this evidence, as our prior decision acknowledged that the Applicant's childhood trauma, Post Traumatic Stress Disorder (PTSD) diagnosis, and the fact that her age and lack of maturity contributed to her criminal activity in the past. We additionally acknowledge and do not seek to diminish the fact that the Applicant suffered intimate partner violence at the hands of J-J-C-. However, she has not submitted new evidence sufficient to establish that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted. Therefore, she has not met the requirements for a motion to reopen. Specifically, the nature, recency, and seriousness of her battery, drug and alcohol-related offenses, all while she held U nonimmigrant status, outweighs the positive and mitigating equities present in her case. Consequently, the Applicant has not demonstrated that she is eligible on motion to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The motion to reopen is dismissed.