U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28586324

Date: OCT. 30, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status of U Nonimmigrant

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 to Adjust Status of U Nonimmigrant (U adjustment application). We dismissed the Applicant's appeal and a subsequent motion to reopen. The matter is now before us on a second motion to reopen. On motion, the Applicant submits a brief and additional documentation and reasserts his eligibility for the benefit sought.

The matter is now before us on a third combined motion to reopen and reconsider. The Applicant submits a brief and additional documentation and reasserts her eligibility for the benefit sought. 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 motion.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The issue before us is whether the Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal. Upon review, the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal.

A favorable exercise of discretion to grant applicants adjustment of status to that of LPR is generally warranted in the absence of adverse factors and presence of favorable factors. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970). Favorable factors include, but are not limited to, family unity, length of residence in the United States, employment, community involvement, and good moral character. *Id.; see also 7 USCIS Policy Manual* A.10(B)(2), https://www.uscis.gov/policy-manual (providing guidance regarding adjudicative factors to consider in discretionary adjustment of status determinations). Where adverse factors are present, the applicant may submit evidence establishing mitigating factors. *See* 8 C.F.R. § 245.24(d)(11) (stating that, "[w]here adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating factors that

the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate").

In our prior decisions, incorporated here by reference, we determined that the evidence and arguments submitted by the Applicant, while relevant, were not sufficient to overcome the discretionary denial of the Applicant's U adjustment application. The Applicant's favorable and mitigating factors, including his lengthy residence in the United States; his family ties, including his wife and U.S. citizen stepdaughter; helpfulness to law enforcement; the trauma the Applicant suffered as a result of qualifying criminal activity; his employment; evidence of tax filings; property ownership as evidenced by his mortgage payments; other financial obligations; unfavorable country conditions in Mexico; and the several letters of support from various individuals were not sufficient to establish that the Applicant's continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given his assault and robbery conviction and the recency of his DUI-related offense, which are serious adverse factors.

With the instant motion to reopen, the Applicant asserts that he is eligible for the benefit sought. He maintains that he has not had any criminal conviction since his 2012 conviction for impaired driving, more than 11 years ago, and thus, he has been rehabilitated. In support, he submits a certified Criminal Record Search from April 2023. The Applicant also contends that he recently incurred debt with a credit union to purchase a truck and were he to relocate abroad, his debt would go unpaid and that would "hurt the citizenry of North Caolina."

A review of the submitted Criminal Record Search indicates that the Applicant had a number of encounters with law enforcement since his 2012 conviction. In [redacted] 2014, the Applicant was charged with "Speeding- 81 in 65 Zone Charged." He was ultimately found responsible for a lesser offense of "Improper Equip-Speedometer." In [redacted] 2016, the Applicant was charged again with "Speding-54 in 35 Zone Charged." He was ultimately found responsible for a lesser offense of "Improper Equip-Speedometer." In [redacted] 2016 and [redacted] 2018, the Applicant was charged with "No Operators License." In [redacted] 2019, the Applicant was charged with "Drive Left of Center," "Reckless Drvg-Wanton Disregard," "Fail to Report Accident," "Hit/Run Fail Stop Prop Damage" and "Wrong Way on Dual Lane Highway." Irrespective of whether these incidents were categorized as infractions or traffic violations, or whether they were ultimately dismissed,[1] these additional encounters with law enforcement, after the Applicant's 2012 conviction for impaired driving, do not show respect for law and order, or the Applicant's rehabilitation.

With the instant motion, the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal. Consequently, the Applicant has not established that his adjustment of status to that of an LPR under section 245(m) of the Act is warranted.

ORDER: The motion to reopen is dismissed.

[1] The fact that a noncitizen may not have been *convicted of* the charges brought against him does not equate with a finding that the underlying conduct or behavior did not *occur*. *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination and that it "will generally not exercise its discretion favorably in cases where the applicant has *committed* or been convicted of" certain classes of crimes) (emphasis added).