



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

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

In Re: 22316586

Date: AUG. 16, 2022

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of 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 Register Permanent Residence or Adjust Status (U adjustment application), finding that his adverse factors outweighed the positive and mitigating equities in his case and accordingly, did not warrant adjustment of status to that of an LPR as a matter of discretion. We summarily dismissed the Applicant's appeal and then dismissed a combined motion to reopen and reconsider. 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 46-year-old native and citizen of Mexico, last entered the United States without admission or parole in March 2013. In May 2013, the Director granted the Applicant U-1 nonimmigrant status. The Applicant timely filed the instant U adjustment application in August 2017. In March 2019, the Director issued a decision denying this application, concluding that the Applicant had not established that a favorable exercise of discretion was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. In December 2020, we summarily dismissed the Applicant's appeal because it "did not identify specifically any erroneous conclusion of law or statement of fact in the unfavorable decision," as required. 8 C.F.R. § 103.3(a)(1)(v).¹ We then dismissed a combined motion to reopen and motion to reconsider because it did not satisfy the requirements of a motion to reopen or motion to reconsider. *See* 8 C.F.R. § 103.5(a)(2)-(4). Specifically, we determined that the combined motion did not state new facts, supported by documentary evidence, material to our decision summarily dismissing the appeal, and it did not

¹ Within that decision, we noted that the Applicant checked the box on the Form I-290B, Notice of Appeal or Motion that "[he] w[ould] [his] submit a brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal."

establish that our summary dismissal was based on an incorrect application of law or policy and that we summarily dismissed the appeal in error, based on the evidence in the record of proceeding at the time of the decision.² The Applicant now files a motion to reopen the appeal.

In support of the current motion, the Applicant submits new evidence, namely, updated personal statements from himself, his spouse and daughter, a *Request for Dismissal* from the Superior Court of California, [REDACTED] medical records for himself and his daughter, documentation related to his daughter's extracurricular activities and academic achievements, letters of support from friends, and a copy of the police report regarding his [REDACTED] 2016 arrest. We note however, that new facts are applicable to a motion to reopen to the extent that they address the directly underlying unfavorable decision. See 8 C.F.R. § 103.5(a)(2). In this case, the new evidence relates to the discretionary determination of whether his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest, not the deficiencies we identified in the dismissal of either the underlying combined motion or the appeal. Because the facts addressed in these documents are immaterial to the basis for our decision on the prior motion and do not address whether our summary dismissal of his appeal was in error, they do not meet the requirements of a motion to reopen.

III. CONCLUSION

The Applicant has not presented new facts on motion addressing our basis for dismissing the underlying motion. Accordingly, he has not met the requirements for a motion to reopen, and his U adjustment application will remain denied.

ORDER: The motion to reopen is dismissed.

² Instead, in support of the motion, the Applicant submitted mail receipts confirming that his attorney submitted his brief to the Vermont Service Center, not to our office.