



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

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

In Re: 22316593

Date: AUG. 18, 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 as a victim of qualifying criminal activity. 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 the Applicant did not warrant a favorable exercise of discretion due to his criminal history. We dismissed the Applicant’s appeal and subsequent motion to reopen and reconsider. The matter is before us on a second motion to reopen and reconsider. Upon review, we will dismiss the motions.

A motion to reopen is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

II. ANALYSIS

The issue on motion is whether the Applicant, a native and citizen of Mexico, merits a favorable exercise of discretion in order to adjust his status to that of an LPR. In our prior decisions, incorporated here by reference, we agreed with the Director’s determination that the Applicant did not warrant a favorable exercise of discretion due to his criminal history; specifically, due to his [] 2017 conviction for infliction of corporal injury on his spouse and battery of his neighbor. Our previous decisions analyzed the factors in the case and concluded that because of his criminal history, particularly the nature, recency and seriousness of his [] 2016 arrest, which resulted in a conviction for inflicting corporal injury upon his spouse and battery, as well as the lack of evidence regarding that arrest, the Applicant did not establish that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

A. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). Generally, a motion

to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. A motion to reconsider is based on the existing record and applicants may not introduce new facts or new evidence relative to their arguments. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006).

On motion, the Applicant asserts that we erred in several parts of our decision dismissing his first motion to reopen and reconsider. First, he claims that we misinterpreted section 6254(f) of the California Government Code (Cal. Gov't Code), which states that law enforcement records must be disclosed "except to the extent that disclosure . . . would endanger the safety of a person involved in the investigation or would endanger the successful completion of the investigation or a related investigation." He again references a letter from the [redacted] Sheriff's Office indicating that U.S. Citizenship and Immigration Services (USCIS) must submit a request for a copy of the Applicant's records directly from their office. He argues that he has no legal authority to force the Sheriff's Office to release his records, and that our decision effectively punishes him for the Sheriff's Office's policy to only release a copy of his records to USCIS at the agency's request. Additionally, the Applicant submits a statement from his attorney in which he explains that he went to the [redacted] Sheriff's Office to request a copy of the police report regarding the Applicant's [redacted] 2016 arrest. However, an officer informed him that the only letter the Sheriff's Office could provide was the same letter the Applicant had previously submitted with his U adjustment application.

The Applicant further asserts that he submitted sufficient evidence to support a grant of adjustment of status as a matter of discretion. He maintains that he has completely rehabilitated himself since his 2017 conviction for injuring a spouse and battery, as evidenced by court orders terminating his former spouse's order of protection, reducing his felony conviction to a misdemeanor, granting his early release from probation and expunging his conviction under section 1203.4 of the California Penal Code, as well as his close family relationships, and his former spouse's positive comments related to his good character and rehabilitation.

The Applicant argues that other than the arrest report, he has submitted every other available objective record regarding his [redacted] 2016 arrest and subsequent conviction and that the evidence on the record warrants a favorable exercise of discretion. We find, however, that even without the submission of the arrest report, the record supports our prior determination that the Applicant's [redacted] 2016 arrest and subsequent domestic violence conviction is a significant adverse factor in his case. The Applicant admitted that he "momentarily lost his temper and slapped his [former spouse] in the face" and pulled her into their home, and he also admitted that a neighbor who intervened was knocked to the ground during the physical altercation. The Applicant pled *nolo contendere* to injuring a spouse and battery in violation of sections 273.5(a) and 242 of the California Penal Code. We reiterate that the Applicant bears the burden of establishing his eligibility and must do so 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). While the Applicant's conviction does not render him ineligible for adjustment of status under section 245(m) of the Act, it remains an adverse factor that USCIS must consider in its exercise of discretionary authority, particularly as it occurred while the Applicant held U nonimmigrant status and involved conduct the U visa program was designed to protect against. *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 discretion favorably in cases where the applicant has committed or

been convicted of” certain classes of crimes). Based on the foregoing, the Applicant has not established that our prior decision was based on an incorrect application of law or policy.

B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. 103.5(a)(2). We interpret “new facts” to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. With the instant motion, the Applicant submits additional evidence of his positive and mitigating equities, including an updated letter from his former spouse, letters from his three U.S. citizen sons, a letter from his employer, and seven letters of support from family members and friends. In a letter from the Applicant’s former spouse, she states that he is a responsible and hard-working person and an excellent father who provides for his children. She maintains that their children would experience “great pain” if the Applicant could not remain in the United States with them. In their own letters, the Applicant’s three children confirm their close relationship with the Applicant and the hardship they would experience without him in their lives. Additional letters from the Applicant’s friends and employer also attest to the Applicant’s character and strong work ethic. While these documents further attest to the Applicant’s character, in addition to evidence previously provided in the record, they do not provide sufficient new facts, and do not overcome our previous decision regarding the import of his criminal history. As a result, the Applicant has not satisfied the requirements for a motion to reopen found at 8 C.F.R. 103.5(a)(2) and we will dismiss the motion to reopen.

III. CONCLUSION

The Applicant has not demonstrated, by a preponderance of the evidence, that his adjustment of status to that of an LPR is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest, as he has not established legal error in our prior decision and has not provided new facts on motion to establish that he meets this requirement.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.