



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

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

In Re: 23329184

Date: DEC. 01, 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 derivative “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). We dismissed the Applicant’s appeal and two subsequent combined motions to reopen and reconsider (combined motions). The matter before us is a third motion to reopen. Upon review, we will dismiss the motion.

A motion a motion to reopen must state new facts and be supported by documentary evidence of new facts. “New facts” are facts that are relevant to the issue(s) raised on motion. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

We dismissed the Applicant’s appeal in June 2021, incorporated here by reference, because he had not demonstrated that he merited a favorable exercise of discretion. We dismissed a subsequent combined motion to reopen and reconsider in February 2022 (first motion) because the submitted evidence did not meet the requirements of motion to reopen, and his arguments did not meet the requirements of motion to reconsider. We dismissed the Applicant’s second combined motion in April 2022 (second motion) because it did not contain a supporting brief or documentary evidence of new facts, nor did it demonstrate that the unfavorable decision was not supported by pertinent law or policy.

The Applicant’s instant filing is a motion to reopen (instant motion) our last decision dismissing his combined motion. He contends that we dismissed the second motion because of a “procedural deficiency” and argues that after submitting that motion, he later submitted accompanying new briefs and evidence to the Vermont Service Center. With the instant motion, he submits these materials for our consideration. The Applicant again asserts that our previous decision inaccurately weighed his arrests as negative factors, and that we abused our discretion by not properly weighing the positive equities in making a discretionary determination in his case.

As an initial matter, the submission of the briefs and evidence on the second motion did not meet form requirements for the Form I-290B, Notice of Appeal or Motion (I-290B), as these did not accompany the form itself. The form instructions for the I-290B state “For motions, you must file any brief and/or

additional evidence *together with* Form I-290B” (emphasis added). Per 8 C.F.R. § 103.2(a)(1), “[e]very form, benefit request, or other document must be submitted . . . and executed in accordance with the form instructions” and a “form’s instructions are . . . incorporated into the regulations requiring its submission.” We lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (explaining that as long as regulations remain in force, they are binding on government officials).

Absent evidence demonstrating that the Applicant correctly followed these instructions, he has not provided new facts or new evidence that would overcome our decision to dismiss his second motion. In the instant motion, the Applicant cites no authority applicable to his case for excusing an untimely submission accompanying a motion, nor does he demonstrate that the delay was reasonable and beyond his control.¹ The Applicant has therefore not shown that our decision to dismiss his previous combined motion was in error. Accordingly, the instant motion to reopen will be dismissed.

In summary, the Applicant has not established new facts relevant to our dismissal of his previous motion that would warrant reopening the proceedings. Consequently, we have no basis for reopening our prior decision. The Applicant’s appeal therefore remains dismissed, and his underlying U adjustment application remains denied.

ORDER: The motion to reopen is dismissed.

¹ Any motion to reopen a proceeding filed by an affected party must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the affected party. 8 C.F.R. §-103.5(a)(1)(i).