



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

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

In Re: 23331242

Date: DEC. 9, 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 as the qualifying family member of 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), and we dismissed the Applicant's subsequent appeal and motion to reopen and reconsider. The matter is again before us on a motion to reopen and reconsider. Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *Id.* § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought. 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).

The Applicant, a native and citizen of Honduras, was granted U-3 nonimmigrant status as the child of a victim of qualifying criminal activity from November 2013 to November 2017, and timely filed his U adjustment application in November 2017. The Director determined that the Applicant's criminal history, which occurred while he held U-3 nonimmigrant status, showed a pattern of problematic behavior, disregard for the laws of the United States, and disregard for the safety and property of others. Accordingly, the Director denied the application, concluding that the Applicant's positive and mitigating equities did not outweigh the adverse factors in his case. In our prior decision on appeal, which we incorporate here, we acknowledged the Applicant's positive and mitigating equities including his family in the United States, his lengthy residence in the country since childhood, his graduation from high school, his participation in a mentoring program, his expressions of remorse, dangerous conditions in Honduras, and letters of support describing his good moral character. Nevertheless, we concluded that the positive and mitigating equities present in the Applicant's case were outweighed by his numerous arrests and citations from law enforcement, including two convictions and that he was still on probation at the time of the decision. In our prior decision on motion, which we also incorporate here, we acknowledged the Applicant's arguments and additional

evidence, but determined he did not establish legal error in our prior decision and did not submit evidence sufficient to demonstrate his eligibility for the benefit sought. We again mentioned that the Applicant's numerous arrests and citations from law enforcement, resulting in two convictions, and the lack of evidence of his successful completion of probation, outweighed his positive and mitigating equities. As such, the Applicant did not demonstrate on motion that he merited a favorable exercise of discretion.

In the instant motion, the Applicant submits a brief, an updated statement, an updated statement from his mother, and several statements in support of his character. The Applicant's brief is nearly identical to his prior one submitted on motion, and we previously addressed the arguments made therein. We incorporate our prior discussion of the Applicant's arguments into this decision. Regarding the new evidence submitted, the character statements describe the Applicant as trustworthy, reliable, hardworking, and responsible. However, aside from his prior attorney's statement, the statements come from individuals who do not indicate knowledge of the Applicant's criminal history. Therefore, we give these letters minimal weight. The Applicant details the very difficult circumstances he experienced in his household and shelters, his educational and professional goals, his version of the circumstances underlying his arrests, his fear of returning to Honduras, and his lack of ties to Honduras. The Applicant's mother details her history of domestic violence and the hardship the Applicant has experienced due to witnessing her abuse and living in shelters for several years. She further describes the physical, emotional, and financial support he provides her, his involvement in his church, and his educational and professional goals. Lastly, the Applicant's mother asserts that the Applicant would be harmed in Honduras in retaliation for her filing police reports against men who abused her there. Although updated statements have been provided on motion and we will consider them, we also note that our prior decisions have addressed the Applicant's education and employment, hardship due to his upbringing, potential hardship if he returned to Honduras, and relevant facts underlying his criminal activity.

While we acknowledge the Applicant's updated evidence, he has not established legal error in our prior decision and has not submitted evidence sufficient to demonstrate his eligibility for the benefit sought. The Applicant's numerous arrests and citations from law enforcement, resulting in two convictions, and the lack of evidence of his successful completion of probation, outweigh the positive and mitigating equities present in his case. As such, the Applicant has not demonstrated on motion that he merits a favorable exercise of discretion. Consequently, the Applicant has not demonstrated that he is eligible to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.