



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

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

In Re: 19731882

Date: FEB. 7, 2022

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status

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 her 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 the matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motions.

**I. LAW**

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if they meet all other eligibility requirements and, "in the opinion" of USCIS, their "continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." Section 245(m) of the Act. The applicant bears the burden of establishing their eligibility, section 291 of the Act, 8 U.S.C. § 1361, and must do so by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This burden includes establishing that discretion should be exercised in their favor, and USCIS may take into account all relevant factors in making its discretionary determination. 8 C.F.R. §§ 245.24(b)(6), (d)(11).

A favorable exercise of discretion to grant an applicant adjustment of status to that of an 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). However, where adverse factors are present, the applicant may submit evidence establishing mitigating equities. See 8 C.F.R. § 245.24(d)(11) (providing that, “[w]here adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate”).

## II. ANALYSIS

The Applicant, a native and citizen of Mexico, was granted U nonimmigrant status in October 2013. She filed the instant U adjustment application in December 2016. In our prior decision, incorporated here by reference, we determined that the Applicant had not established that her continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest, as required by section 245(m)(1)(B) of the Act, because her criminal history outweighed her positive equities and she had not demonstrated that she merited a favorable exercise of discretion.<sup>1</sup>

On motion, the Applicant submits a brief, an updated personal statement, statements from her family members, copies of medical records for her husband, documents concerning her tax filings, and documents regarding her family’s monthly expenses. She asserts that this new evidence further proves the financial hardships her family will face if her application is denied, as well as proving that she did not file taxes using another person’s identity in relation to her criminal conviction. The Applicant also cites precedent decisions which were issued discussing the use of discretion for applicants with criminal histories and argues to distinguish how the facts of her case differ from those.

In support of her motion to reopen, the Applicant submits a new personal statement, which notes that her husband has been undergoing treatment for back pain and other injuries sustained through his work, and that her husband has stopped working. Due to this, the Applicant states that she is now solely responsible for the household expenses. The Applicant’s husband further submits a new personal statement, discussing the treatment he has sought, and submitting copies of his medical records for that treatment. Further, the Applicant states that following her husband’s injuries, her son began to work part time in addition to attending college, in order to provide additional support to the family; however, the Applicant states that this situation led her son to fail some of his classes, be removed from college, and return to living with the Applicant and her husband.

In our previous decision, we agreed with the Director’s finding that the Applicant’s 2015 conviction for criminal possession of an identification document, her repeated use of a U.S. citizen’s identity to obtain a driver’s license, her multiple renewals of the driver’s license, and her failure to assume responsibility for her actions after being investigated, amounted to a serious negative discretionary factor. On motion, the Applicant notes that while the ultimate charge she plead guilty to contained language that she knowingly possessed an “actual driver’s license” of another individual, she now

---

<sup>1</sup> The Applicant’s criminal history involves an arrest in [ ] 2014 in Colorado. Following a car accident, the Applicant was arrested for failure to appear due to the issuance of a warrant for her arrest for five counts of attempting to influence a public official, five counts of forgery, and five counts of criminal impersonation. Ultimately, in [ ] 2015, the Applicant plead guilty to one count of criminal possession of identification documents.

claims that she did not possess A-A-'s, "actual driver's license when she first applied in 2003, but that she did on subsequent occasions renew a driver's license in the name of [A-A-] with [the Applicant's] picture on it." However, we cannot look behind her conviction to reassess her guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine an alien's guilt or innocence); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1974) (same). The Applicant plead guilty to the charge which stated that she possessed an "actual driver's license" of another individual, therefore, we find no error in our previous decision.

The Applicant additionally submits copies of letters received from the Internal Revenue Service (IRS) in attempt to indicate that she did not file taxes prior to 2007 and did not use A-A-'s<sup>2</sup> identity to file taxes. We note, however, that the Applicant submitted her requests to the IRS using the individual taxpayer identification number (ITIN) assigned to her in 2010, and the social security number assigned to her in 2012. In the Applicant's new and prior statements in the record, she indicated that she used A-A-'s identity to, "get a driver's license and to work."<sup>3</sup> The Applicant has not provided copies of any other related tax or income documents (for instance, Form W-2, Wage and Tax Statement) for any employment she obtained while using A-A-'s identity from 2003-2006. While it is understandable that the Applicant did not request the IRS to provide her with tax transcripts filed with the A-A-'s identity, the Applicant's submission of these requests from the IRS cannot be given significant weight, as the identifying information would not have matched the identity that the Applicant was using at the time. The ITIN and social security number had not been issued to the Applicant prior to 2010 and 2012, respectively, and the IRS requests would not result in any findings based on those identifiers.

In the remainder of the brief submitted with her motion, the Applicant attempts to differentiate her criminal acts from those previously considered in published decisions. The Applicant cites *Matter of Mendez Morales*, 21 I&N Dec. 296, 300 (BIA 1996) in order to argue that her, "criminal conviction does not rise to (*sic*) level of seriousness as in *Matter of Mendez Morales*;" however, a criminal conviction is not required to be a "serious crime" to be given significant negative weight, as USICS may consider all factors in making its discretionary determination as to if, "in the opinion" of USCIS, the Applicant's "continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." 8 C.F.R. § 245.24(b)(6), (d)(11) and section 245(m) of the Act.

Finally, the Applicant reasserts her positive mitigating factors, including her length of residence in the United States, family ties, history of employment and payment of taxes since 2010. We acknowledge the evidence provided on motion which indicates additional positive mitigating factors on the Applicant's behalf; however, the Applicant has not established legal error in our prior decision and has not sufficiently addressed our above-mentioned concerns.

---

<sup>2</sup> We use initials to protect the privacy of individuals.

<sup>3</sup> In the brief submitted with the motion, the Applicant's attorney claims that the Applicant never used A-A-'s identity to work, and only used the identity to obtain a driver's license, stating, "[a]s explained above, [the Applicant] obtained the driver's license for the sole purpose of driving and did not use the driver's license for any other purpose," and cites to the Applicant's new and prior statements, which, as noted, state that she used the identity, "to get a driver's license *and to work*." (Emphasis added). Assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

An applicant must establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. To determine whether an applicant has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). We previously determined that the new evidence submitted with her appeal did not overcome the Director's determination. Finally, the Applicant has not resolved this deficiency on appeal or on motion. Accordingly, the Applicant has not met her burden to establish that the positive and mitigating equities in her case outweigh the adverse factors such that she merits a favorable exercise of discretion. Consequently, the Applicant has not established that her adjustment of status to that of an LPR under section 245(m)(3) of the Act is warranted.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.