



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

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

In Re: 18729156

Date: FEB. 7, 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. The matter is now before us on a motion to reopen and reconsider. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other 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 the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record as the time of the initial decision. 8 C.F.R. § 103.5(a)(3). 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 native and citizen of Mexico, was granted U-3 nonimmigrant status as the child of a victim of qualifying criminal activity from December 2013 to December 2017, and timely filed his U adjustment application in November 2017. The Director denied the application, concluding that the Applicant had not submitted sufficient evidence to establish that he merited a favorable exercise of discretion.

In our prior decision on appeal, incorporated here by reference, we acknowledged the Applicant’s positive and mitigating equities including his residence in the United States while in lawful visitor and U-3 nonimmigrant statuses, stable employment, payment of taxes, and LPR mother and siblings. Nevertheless, we concluded that the positive and mitigating equities were outweighed by his

immigration violations, the nature, recency and seriousness of his criminal convictions for drugs and alcohol, his driving-related offenses, and the lack of sufficient evidence of rehabilitation. The record reflects that the Applicant was arrested in [] 2014 in [] New Mexico, for possession of paraphernalia and possession of marijuana in violation of sections of 30-31-25.1 and 30-31-23 of the N.M. Stat. Ann., respectively. He pled guilty and was given a deferred sentence. He was placed on 30 days' unsupervised probation and ordered to pay a \$337.00 fine. He submitted evidence that he successfully completed probation and paid the fine by [] 2015. The Applicant was again arrested in [] 2016 in [] for possession of a controlled substance in violation of section 30-31-23 of the N.M. Stat. Ann. He pled guilty and was placed on 30 days' unsupervised probation and ordered to pay a \$248.00 fine. He submitted evidence that he successfully completed probation and paid the fine by [] 2016. The Applicant was also cited in [] from [] 2012 to [] 2019 for numerous driving-related offenses, including driving while under the influence of drugs and/or alcohol, driving while intoxicated with a blood alcohol level of .08% or more, speeding, driving without a license, driving without insurance, and improper display of registration, failure to maintain traffic lane, expired registration of a motor vehicle, use of plate/registration number on another vehicle, driving while licensed revoked, failure to obey traffic signal, failure to use seat belts, and open container in motor vehicle. The record indicates that the Applicant was given various punishments including probation, fines, community service, drug and alcohol screening and an interlock ignition device, or the charges were dismissed.

We acknowledged the Applicant's assertion that the Director improperly considered his arrest and pending charges for driving while intoxicated in [] 2019. However, we noted that court disposition records indicated that the Applicant pled guilty and stressed that it is permissible to consider an arrest record in an exercise of discretion. We also acknowledged the Applicant's claim that his criminal history was related to the difficulties he experienced throughout his life. We noted however, that his claim was outweighed by the frequency and recency of his offenses and convictions, the time period over which they occurred, their occurrence after he was granted U-3 nonimmigrant status, and the lack of evidence of rehabilitation.

On motion, the Applicant contends that we erroneously denied his U adjustment application by failing to give sufficient weight to his positive and mitigating equities. He acknowledges the poor choices that led to his arrests, but claims that they do not conclusively make him eligible for adjustment of status. Instead, he implores us to acknowledge the context and circumstances in which the arrests occurred. He argues that a majority of the incidents in his record are traffic violations, which were "inappropriately treated as serious adverse factors when in reality they do not trigger any specific ground of inadmissibility." Regarding his arrests for alcohol and marijuana, the Applicant states that, he "understands the gravity of those mistakes and is thankful that none of them resulted in injury or harm to others." He highlights his extensive family ties to the United States, his steady employment and payment of taxes, and his lengthy residence in the United States as significant positive and mitigating factors in his case. In further support of the positive and mitigating equities in his case, the Applicant submits letters from family, , and coworkers, a psychological assessment for his mother detailing her reliance on him for emotional and financial support, copies of death certificates for several family members in Mexico, financial documentation, a letter of completion of mandatory

alcohol screening in [] 2019, and evidence of the issuance of a temporary interlock driver's license in [] 2021.

The Applicant further argues that we erred by failing to adequately address hardship his family would suffer if he is not granted adjustment of status as a matter of discretion. He maintains that he has virtually no connection to Mexico and that several of his family members have been killed in Mexico due to gun violence. He argues that we should consider such "life and death factors" when making a discretionary decision that centers on humanitarian grounds, family unity, and/or public interest. Upon review, however, the record reflects that we considered this evidence, as our prior decision acknowledged the totality of the positive and mitigating equities in the case, namely that that the Applicant is a father figure to his siblings, financially supports his family, and has helped his family avoid homelessness and his siblings attend school. Additionally, we acknowledged the hardship the Applicant and his family would experience if he returned to Mexico where violence is pervasive and he has limited family connections.

We acknowledge the Applicant's arguments and additional evidence of positive and mitigating factors in his case. However, he has not provided documentary evidence of new facts sufficient to establish his eligibility or established that our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision. The Applicant's prior immigration violations and the nature, recency, and seriousness of his criminal and driving-related offenses, during the time he held U nonimmigrant status, outweighs the positive and mitigating equities present in his case. Consequently, the Applicant has not demonstrated that he is eligible on motion 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.