U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19732017

Date: FEB. 09, 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 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 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 Turkey, was granted derivative U nonimmigrant status in October 2014. He filed the instant U adjustment application in July 2018. In our prior decision, incorporated here by reference, we determined that the Applicant had not established that his 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 his criminal history outweighed his positive equities and he had not demonstrated that he merited a favorable exercise of discretion.

On motion, the Applicant submits a brief, an updated personal statement, documentation regarding his arrests, and additional evidence previously submitted with his appeal and U adjustment application. He asserts that our previous decision inaccurately weighed his arrests as negative factors, and that we did not properly weigh his positive equities

The Applicant argues that we erred in considering his arrests that did not result in convictions as significant negative factors in our discretionary determination. The Applicant was arrested in 2004 and 2005 and charged with assault and battery, and in both cases, the Applicant was found not guilty. In 2008, the Applicant was arrested for contributing to the delinquency of a minor. He plead nolo contendere to the charge, and the court found sufficient facts to find guilt and deferred adjudication of the case until [redacted] 2009. The court thereafter dismissed the charge and sentenced the Applicant to two years of probation. In addition, he was ordered to not have any contact with the victim and was required to pay additional costs. Finally, in 2009, the Applicant was arrested and charged with carrying a concealed weapon without a license, and this charge was dismissed.

In support of his motion to reopen, the Applicant submits a new personal statement, which gives minimal detail to his 2008 and 2009 arrests, but still does not provide any statement regarding the 2004 and 2005 arrests. Regarding his 2008 arrest, the Applicant provides a similar statement to that which was already in the record, stating, "a former employee sought a romantic relationship with [him], which [he] did not reciprocate," and that the employee's family was simply seeking to stop their daughter from pursuing the Applicant. Regarding his 2009 arrest, the Applicant only states, "[t]his charge was dropped. [He] was a passenger in the car in which the weapon was present. The gun was legal and registered to a person not present in the automobile at the time of the incident." The Applicant again does not submit arrest records for these incidents, nor for his 2004 or 2005 arrests for assault and battery.

On motion, the Applicant again argues that his arrests were not recent, and that they were not serious because they did not result in convictions. However, the Applicant still has not submitted evidence

which could corroborate his claims or provided a statement regarding what occurred with his 2004 and 2005 arrests for assault and battery, choosing to again submit documentation that was addressed in our previous decision.[1] The Applicant does submit a copy of his 2008 charges, which he plead nolo contendere, and indicates that his arrest was for a misdemeanor charge of contributing to the delinquency of a minor; however, this is not sufficient to overcome our previous decision, as the discussion in our previous decision was regarding the unclear nature of the Applicant's 2004 and 2005 arrests, and the specific charges that the Applicant faced as a result of those incidents.

The fact that the Applicant was not convicted of the charges in his 2004, 2005, and 2009 arrests does not equate with a finding that the underlying conduct or behavior leading to that charge did not occur or that the charge was unsubstantiated. *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination). In addition, reliance on an arrest report in adjudicating discretionary relief—even in the absence of a criminal conviction—is permissible provided that the report is inherently reliable and its use is not fundamentally unfair. *See e.g., Matter of Grijalva*, 19 I&N Dec. at 722 ("[T]he admission into the record of . . . information contained in the police reports is especially appropriate in cases involving discretionary relief . . ., where all relevant factors . . . should be considered to determine whether an [applicant] warrants a favorable exercise of discretion."). The Applicant has not provided probative evidence indicating that arrest records are unavailable, as none of the letters provided from various authorities stated specifically that the Applicant had requested the arrest records.

Finally, regarding the Applicant's motion to reconsider, he presents a general disagreement with how prior decisions in his case weighed his positive and negative factors, and for our determination that he has not shown rehabilitation.[2] The Applicant does not provide any pertinent precedent decisions that establish that our decision was incorrect based on the evidence in the record at the time of the decision, or that our decision was based on an incorrect application of law or USCIS policy. As such, he has not met the requirements of a motion to reconsider.

An applicant must establish that he 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 his 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). The Director properly determined that the Applicant did not provide probative evidence of the events that led to his arrests, and we previously determined that the new evidence submitted with his appeal did not overcome that determination. Finally, the Applicant has not resolved this deficiency on appeal or on motion. Accordingly, the Applicant has not met his burden to establish that the positive and mitigating equities in his case

[1] The evidence submitted includes a letter from the [redacted] General District Court, which stated that they did not have court records for the Applicant's 2004 charge, as all records are destroyed after ten years and a letter from the Office of the Sheriff of [redacted] stating that the Applicant's 2004 and 2005 arrests resulted in the Applicant being found not guilty, but not indicating the unavailability of his arrests records from these incidents, or whether they were felony or misdemeanor charges. The Applicant has submitted multiple Criminal History requests from various jurisdictions but has not submitted probative evidence from any jurisdiction explicitly stating that the Applicant's arrest records for his arrests are not available.

[2] As noted in our prior decision, the Applicant had not submitted documentation that he was successfully discharged from 2009 probation, nor has he addressed his conduct in relation to his 2004 and 2005 arrests. As such, we find no error in our determination that the Applicant has not shown rehabilitation.

outweigh the adverse factors such that he merits a favorable exercise of discretion. Consequently, the Applicant has not established that his 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.