



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

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

In Re: 18145581

Date: FEB. 17, 2022

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of a 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 “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), concluding that the Applicant had not established that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted. On appeal, we determined that the Applicant did not overcome the basis for the Director’s denial. The Applicant has filed a motion to reopen our decision. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

U.S. Citizenship and Immigration Services may adjust the status of a U nonimmigrant to an LPR if that individual demonstrates that he or she has been physically present in the United States for a continuous period of at least three years since admission as a U nonimmigrant, has not unreasonably refused to provide assistance in a criminal investigation or prosecution, and the individual’s 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; 8 C.F.R. § 245.24(f).

In these proceedings, the burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible evidence for us to consider in our *de novo* review; however, we determine, in our sole discretion, the weight to give that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was granted U nonimmigrant status in October 2014, and he filed the instant U adjustment application in November 2017. The issue on motion is whether 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 such that a favorable exercise of discretion to adjust his status to that of an LPR is warranted. In our prior decision, which we incorporate here by reference, we acknowledged the Applicant's favorable and mitigating equities, including his long residence in the United States; family ties including his LPR spouse and four adult U.S. citizen children who he supports financially; hardship to his spouse if he is not granted relief due to her medical conditions for which he provides assistance; his employment; his payment of taxes; and letters regarding his positive character from friends and family. We determined, however, that the Applicant's favorable and mitigating equities did not outweigh his adverse factors, which include his arrests in 2002 and 2003 for domestic abuse and in 2016 for misdemeanor child abuse, and his failure to disclose his criminal history on his Form I-918, Petition for U Nonimmigrant Status, and U adjustment application.

We determined that the Applicant's statements provided little detail about the incidents and his behavior that led to his arrests, and did not describe how police became involved or his interaction with law enforcement either at the scene or afterwards. He also did not submit a statement from the son who was the victim of the 2016 incident or any other evidence to provide more detail or to corroborate his account of events. Further, the Applicant's spouse did not address the 2002 or 2003 incidents that led to his arrests.

We also noted that the record did not include a statement from the Applicant's spouse's physician describing the severity of her condition or her reliance on the Applicant, and the Applicant did not indicate whether other family members are available and willing to assist her. Although the Applicant indicated on appeal that he is now responsible for his son with medical issues, we mentioned that his son's condition was not clear from the record nor was the care he provided, as the medical records show the son has a wife with whom he lives. The son's medical records did not contain a letter from a treating physician or any other medical professional about his condition. We acknowledged the Applicant's contention that his spouse and son rely on him, but without further explanation of their issues, the medical records alone did not clarify the health concerns, the Applicant's role in providing care, or the hardship they would face without him.

On motion, the Applicant provides evidence related to his son's and spouse's medical issues and reliance on him, and more information related to the 2016 criminal charge. The clinical director of a behavioral care agency states that the Applicant's son, who is 30 years old, is receiving mental health and substance abuse services, he has been diagnosed with substance use disorder and bipolar disorder, and he has numerous health issues and psychosocial stressors affecting his mental health. He further mentions that the Applicant is his guardian and responsible for administering his medication and coordinating his services, and his involvement in his son's treatment is indispensable. In addition, the Applicant's son's wife states that she left him due to his psychological issues. The Applicant's spouse's caregivers state that she has end stage renal disease and is dependent on dialysis for her survival, and the Applicant provides her transportation to her appointments and assistance three times a week. His spouse makes similar comments and mentions that her son who lives with them is sick and is not allowed to drive.

The Applicant's son, who was the victim in the 2016 criminal charge, states that the Applicant has provided support and guidance throughout his life, he provides for him and his mother, their relationship has improved, and the punishment he received was not the best choice, but he understands he made some wrong choices the day of the incident. He states he drove to school without a permit, ignored missed calls from his parents, and they were upset with him when he arrived home.

In reviewing whether a favorable exercise of discretion is warranted on motion, we note the Applicant's favorable and mitigating equities as described above. Furthermore, on motion the Applicant has provided additional evidence that he provides significant support for his spouse and son, who have significant medical and mental health issues respectively. However, the record still includes little detail about the incidents and his behavior that led to his arrests, how the police became involved, and his interaction with law enforcement either at the scene or afterwards. Although the Applicant has submitted a statement from his son, the statement does not provide details about the actual abuse that he experienced. While we are sympathetic to the challenges of the Applicant's family and his assistance to them, and note his other favorable and mitigating equities, we again find that they do not outweigh his adverse factors. Therefore, the Applicant has not established by a preponderance of the evidence that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted.

III. CONCLUSION

The Applicant has not submitted new evidence sufficient to establish that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted. Therefore, he has not met the requirements for a motion to reopen.

ORDER: The motion to reopen is dismissed.