



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

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

In Re: 18955587

Date: FEB. 22, 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 grant the motion to reopen and remand the matter to the Director for the issuance of a new decision. The motion to reconsider is moot.

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 at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The applicant must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

II. ANALYSIS

The Applicant, a native and citizen of Honduras, was granted U-3 nonimmigrant status as the spouse of a victim of qualifying criminal activity from July 2013 to July 2017, and timely filed his U adjustment application in June 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. The Director highlighted that the record did not contain sufficient evidence to establish that the specific circumstances behind each of the Applicant’s arrests and citations, or the disposition of the same.

In our prior decision on appeal, incorporated here by reference, we acknowledged the Applicant's positive and mitigating equities including his lengthy residence in the United States, his extensive family and community ties including his spouse, children, and stepchildren, and his ownership of a construction business. Additionally, we acknowledged that the Applicant is the primary breadwinner and that his spouse relies on his emotional support due to her prior severe victimization. Nevertheless, we concluded that the positive and mitigating equities present in the Applicant's case were outweighed by his history of arrests and convictions, which evidenced a habitual disregard for the laws of the United States. The record reflects that the Applicant was cited or arrested on multiple occasions between [] 2014 to [] 2017 for driving without a proper taillamp, driving on a suspended license, driving without insurance, and failure to stop at a stop sign driving too closely.¹ The record further indicates that the Applicant repeatedly failed to appear for his hearings resulting in numerous fines, arrest warrants, and probation.

Regarding the Applicant's arrests and citations, we noted that, although they did not reflect that he harmed or injured others, they indicated a pattern of habitual disregard for the laws of the United States. We further noted that the Applicant was arrested or cited five times for driving without a license or driving with a suspended or revoked license—all of which occurred after he was granted U nonimmigrant status. We acknowledged the Applicant's voluntary disclosure of two additional traffic-related citations in [] 2016 and [] 2017 on appeal, but noted that he failed to disclose the citations or provide an explanation of the conduct in response to a request for evidence (RFE). We also noted that, contrary to the Applicant's assertions, he did not provide evidence below or on appeal that all of his criminal issues had been resolved.² As a result, we concluded that "the absence of the requested documentation or an explanation of attempts to obtain it prevent[ed] us from assessing a complete accounting of [the Applicant's] behavior, including whether he has met his burden to show whether he has been rehabilitated." We also acknowledged the Applicant's statement on appeal expressing remorse and describing the circumstances surrounding some of his traffic-related arrests and citations. Nevertheless, we concluded that the Applicant had not shown genuine remorse because he did not indicate an understanding of his mistakes or demonstrated what steps he had taken to ensure he complied with the laws of the United States, particularly given his history of recidivism and the recency of his arrests and citations.

On motion, the Applicant contends that "[we] prejudiced [him] by including unsubstantiated arrest allegations in his record" and that "[t]here are important extenuating circumstances in [his] criminal and traffic history." In support of his contentions, the Applicant submits, among other things, an updated personal statement, copies of his traffic-related citations and arrests from [] 2014 to [] 2019, and comprehensive evidence establishing that he paid all of his court costs and fines, complied with and successfully completed any terms of probation. In his updated statement, the Applicant recounts in detail his traffic-related citations and arrests and details the circumstances that led to those arrests and citations. Specifically, he explains that the arrests or citations he received in [] 2014, [] 2016, [] 2017, and [] 2017 were the result of his misunderstanding, a language barrier, or clerical errors by motor vehicle authorities in Georgia and Louisiana. Additionally, the Applicant

¹ On motion, the Applicant submits documentation of two additional traffic citations in [] 2018 in [] Georgia, for speeding and [] 2019 in [] Georgia, for following too closely.

² We noted that the Applicant did not provide evidence that he paid the \$676.00 fine for his [] 2016 arrest, successfully completed probation or paid the \$747.83 fine for his [] 2017 arrest, or paid the \$86.00 fine for his [] 2017 arrest.

reiterated that the citations and arrests in [] 2017, [] 2017, [] 2017, and [] 2018 that we cited in our prior decision never occurred. He submitted a background check from the Federal Bureau of Investigation (FBI) and a certified arrest history from the state of Georgia on appeal confirming that he was not cited or arrested on any of those dates.

The Applicant also contends on motion that he has exhibited rehabilitation and remorse, and has “exceptional favorable discretionary factors that clearly outweigh the adverse factors in his case.” Regarding rehabilitation and remorse, the Applicant submits evidence that he has a valid driver’s license, vehicle insurance, and registration in Louisiana. He also submits an Official Certificate of Driving Record from the Louisiana Department of Public Safety and Corrections Office of Motor Vehicles confirming that “[he] ha[s] no outstanding issues with the Office of Motor Vehicles.” In terms of his favorable discretionary factors, the Applicant once again highlights his extensive ties to the United States, and provides vital documents for his LPR spouse and stepchildren, and U.S. citizen children, and tax documents for his construction business.

The record, as supplemented on appeal and subsequent motion, includes additional evidence directly related to the issues that significantly informed the Director’s discretionary determination. Accordingly, we will remand the matter to the Director for the consideration of this evidence in the first instance and to determine whether the Applicant has met his burden of establishing that a favorable exercise of discretion is warranted under section 245(m) of the Act.

ORDER: The motion to reopen is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.³

³ The Applicant also asserts that reconsideration is warranted because we improperly relied on *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978), *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991), and *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), in assessing his traffic and criminal history, and that “[i]t [wa]s clearly wrong to put [him] in the same league as the respondents in the cases cited by [us] and to subject him to the same fate.” However, since we are granting the Applicant’s motion to reopen, we will not address his arguments regarding the motion to reconsider.