U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22342144

Date: JUL. 22, 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). We summarily dismissed the Applicant's appeal and then dismissed his motion to reopen and reconsider, as well as his subsequent motion to reopen. 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 is based on new facts that are supported by documentary evidence, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

U.S. Citizenship and Immigration Services (USCIS) 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).

To be eligible for adjustment of status as a U nonimmigrant, an applicant must establish, among other requirements, that he or she was lawfully admitted as a U nonimmigrant and continues to hold such status at the time of application. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(b)(2).

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 Honduras, was granted U nonimmigrant status from June 25, 2013, until June 24, 2017. The Applicant initially filed his U adjustment application on June 19, 2017, and USCIS issued a rejection notice dated June 23, 2017, which informed the Applicant of the deficiencies in his filing. The Applicant resubmitted his U adjustment application on July 8, 2017. The Director denied the U adjustment application, determining that he had not demonstrated that his adjustment of status to an LPR is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that he warrants a favorable exercise of discretion. The Director found that the Applicant's [redacted] 2015 arrest and charge for assault on a family member, while in U nonimmigrant status, outweighed his favorable and mitigating equities. We summarily dismissed his appeal. In dismissing the Applicant's subsequent motion to reopen and reconsider, we found that he did not overcome the Director's basis for denial. Specifically, we determined that due to the nature, severity, and recency of the Applicant's [redacted] 2015 arrest for assault on a family member while in U nonimmigrant status, a violent crime for which the judge found facts sufficient to warrant a finding of guilt, and for which significant discrepancies in the record remained, he did not demonstrate 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 he warrants a favorable exercise of discretion. In his subsequent motion to reopen, the Applicant provided documentation to support his claim that in relation to his arrest, he was not violent towards his spouse. However, we did not address this documentation and whether the Applicant merited a favorable exercise of discretion.

As mentioned in our last two decisions, which we hereby incorporate by reference, the administrative record reflects that USCIS initially rejected the Applicant's U adjustment application filing and issued a rejection notice dated June 23, 2017, which informed the Applicant of the deficiencies in his filing. Rejected applications and petitions will not retain a filing date. 8 C.F.R. § 103.2(a)(7)(i). The Applicant resubmitted his U adjustment application on July 8, 2017, and the Vermont Service Center accepted it for filing. As the Applicant's U nonimmigrant status expired on June 24, 2017, the record reflects that he was not in U nonimmigrant status, as required by 8 C.F.R. § 245.24(b)(2)(ii), at the time he filed his U adjustment application.

In the instant motion to reopen and reconsider, the Applicant argues that USCIS issued a Form I-797, Notice of Action (receipt notice) for his subsequent July 8, 2017, filing of his U adjustment application, and that neither the Director's request for evidence (RFE) or decision noted that the Applicant's U adjustment application were untimely filed. The Applicant's argument regarding the issuance of the receipt notice is not indicative of the application being reviewed for timeliness or sufficiency of the application itself, rather that the Applicant had satisfied the requirements for the filing to be accepted and receipted at the location where it was delivered. As the initial June 19, 2017, filing was followed by the issuance of a rejection notice, pursuant to 8 C.F.R. § 103.2(a)(7)(i), that initial filing date does not carry over to the July 8, 2017, re-filing of his U adjustment application for the reasons outlined above. While the Applicant is correct that the Director's RFE and decision did not include this ineligibility ground, in the course of our review of the record, we may address issues that were not

raised or resolved in the prior decision.[1] Therefore, we determine that our prior decisions were correct in their determination that the Applicant's U nonimmigrant status had expired prior to his filing of his U adjustment application.

Because the Applicant has not established that he was in U nonimmigrant status at the time he filed his U adjustment application, which is dispositive of his appeal and subsequent motions, we decline to reach and hereby continue to reserve the Applicant's motion arguments regarding whether he merits a favorable exercise of discretion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where a petitioner or applicant is otherwise ineligible).

III. CONCLUSION

The Applicant has not submitted new evidence that establishes eligibility for the benefit sought, nor has he established that our prior decision was based on an incorrect application of law or policy. Therefore, he has not met the requirements for a motion to reopen or motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).