



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

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

In Re: 22260193

Date: JUN. 24, 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 as 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 appeal and subsequent motion to reopen and reconsider. The matter is before us on a second motion to reopen and reconsider. Upon review, we will dismiss the joint motion.

I. LAW

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. 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 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.

II. ANALYSIS

In our prior decisions, incorporated here by reference, we concurred with the Director and dismissed the Applicant’s appeal and motion to reopen and reconsider. Specifically, we agreed with the Director’s determination that the Applicant did not warrant a favorable exercise of discretion due to his criminal history; specifically, for a 2006 arrest for shoplifting and a 2016 arrest for inflicting corporal injury on a spouse or cohabitant. Our previous decisions dismissing his appeal and subsequent joint motion provided a comprehensive analysis of the factors in the case, and concluded

that because of his criminal history, particularly the lack of evidence and candor about his 2016 arrest, he did not establish that it was in the public interest to adjust his status to that of an LPR.

A. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. 103.5(a)(2). We interpret “new facts” to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. With the present motion, the Applicant submits a certificate of name search results from the Superior Court of California, [REDACTED] two letters from an individual named M-V-, two copies of an affidavit from P-W-, the Applicant’s employer, and a copy of a letter indicating that the Applicant had donated blood.¹

The Applicant does not submit an updated statement or brief to explain the relevance of the new evidence. While the certificate of name search results from the Superior Court of California, [REDACTED] indicates a result of “no case filed” in a search of the Applicant’s name, we noted in our appeal decision that it appeared that the Applicant’s name differed in regard to his 2016 arrest, and this new document did not complete a search using that variation of his name, include other possible variations, or indicate that it was completed using the Applicant’s fingerprints. In reviewing the two letters sent by M-V-, it is indicated that M-V- attempted to obtain police records from the [REDACTED] Police Department [REDACTED] Community Police Station and claims he was told that “the report had been archives [*sic*] and due too [*sic*] COVID-19 protocol the arrest reports must be subpoena [*sic*] by the government agency who is requested [*sic*] it or send in the [REDACTED] Police Department Records and Identification Division application for release of crime or traffic collision report.” These letters are not helpful in the Applicant’s case, as they do not contain official information from a government authority, rather, they appear to be submitted by a third-party who attempted to obtain the Applicant’s records on his behalf. As noted in our previous decisions, 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).

The letter from P-W- states that he has known the Applicant for 15 years and was his employer for 10. P-W- states that the Applicant is “reliable, dependable, and extremely conscientious.” P-W- also attests to the Applicant’s character. The letter from Children’s Hospital [REDACTED] indicates that the Applicant donated blood in February 2022. While these documents further attest to the Applicant’s character, in addition to evidence previously provided in the record, they do not provide sufficient new facts, and do not overcome our previous decision. As a result, the Applicant has not satisfied the requirements for a motion to reopen found at 8 C.F.R. 103.5(a)(2) and we will dismiss the motion to reopen.

B. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). Generally, a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision

¹ We use initials to protect the privacy of individuals.

for alleged errors in appraising the facts and the law. A motion to reconsider is based on the existing record and Applicants may not introduce new facts or new evidence relative to their arguments. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006). With the present motion, the Applicant only submitted new evidence supporting his motion to reopen and did not provide any legal brief or argument outlining the reasons for reconsideration. He therefore has not established that our decision was based on an incorrect application of law or USCIS policy.

The Applicant has not demonstrated that we should either reopen the proceedings or reconsider our decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.