



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

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

In Re: 21555798

Date: NOV. 17, 2022

Service 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, 8 U.S.C. § 1255(m), based on her “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status. We dismissed the Applicant’s appeal and two subsequent motions. Upon further review of the record, we reopened the matter on a Service motion in February 2022, as it appeared that in response to the motion filed in February of 2020, we committed an error by re-issuing the decision we had previously issued relating to the motion filed in March of 2019. *See* 8 C.F.R. § 103.5 (for the provisions relating to Service motions). Based on this information, we withdrew our previous decision. With the notice of Service motion, we enclosed a copy of the decision that we should have issued on the February 2020 motion filing. In accordance with the regulation at 8 C.F.R. § 103.5(a)(5), the Applicant was afforded 33 days in which to file a brief addressing the enclosed motion decision. As of the date of this notice, the Applicant has not provided a response. The enclosed decision, dated January 19, 2021, is therefore final, and the service motion is dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

ENCLOSURES:

1. AAO decision dismissing motions dated Jan. 19, 2021 (5 pages)



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

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

In Re: 10875783

Date: JAN. 19, 2021

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 her “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 a subsequent combined motion to reopen and reconsider.¹ The matter is now before us on a second motion to reopen and reconsider.

On motion, the Applicant submits additional evidence and asserts that we erred in finding that she had not demonstrated her continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that she warrants a favorable exercise of discretion to adjust her status to that of an LPR. Upon review, we will dismiss the motions.

Applicants for U adjustment bear the burden of establishing eligibility pursuant to section 291 of the Act, 8 U.S.C. § 1361, and must establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions and the application will remain denied.

I. LAW

A motion to reopen must state new facts 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 as the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

The Director approved the Applicant’s petition for U-1 nonimmigrant status as a victim of domestic violence in October 2013 with her status valid until October 2017. The Applicant filed the instant U adjustment application in February 2017. With the application the Applicant submitted evidence that

¹ We dismissed the Applicant’s appeal due to a discrepancy in the Applicant’s signature on Form I-290B and the underlying petition. We determined evidence submitted with the Applicant’s overcame the reason for dismissal.

included a personal statement; school records for her children; medical records for her mother; research articles about immigrant families, single parenting, and education; country conditions information for Mexico; certificates of achievement; letters of support; financial records; and civil documents. The Director concluded that the Applicant did not submit sufficient evidence to establish that she warranted a positive exercise of discretion to adjust her status to that of an LPR. In denying the adjustment application, the Director acknowledged the positive and mitigating equities present in the Applicant's case, but concluded that they were outweighed by the negative factors, notably a 13-year history of illegal activity that included convictions for felony forgery and for driving while intoxicated (DWI) and other arrests that involved the taking of property of others. The Director also found that the Applicant has arrests and convictions involving motor vehicle-related charges that indicate a disregard for the law and the welfare of others, and determined that the Applicant's residency and steady employment in the United States could be given only limited weight considering she entered the country without inspection or admission as an adult and has a history of taking property. Lastly, the Director noted that the Applicant did not submit evidence that she successfully completed her term of probation from a 2014 arrest and conviction for DWI.

In our decision dismissing the Applicant's previous motion, which we incorporate here by reference, we acknowledged and addressed the additional evidence submitted and the arguments presented with the Applicant's appeal of the Director's decision. We determined that the Director had properly found that the totality of the positive and mitigating equities were outweighed by the negative factors, considering the number and seriousness of the Applicant's arrests and convictions and that her last conviction for DWI occurred while she held U nonimmigrant status. We recognized the Applicant's contention that several of her arrests were the result of depression and the abuse she suffered from a previous partner but determined it did not excuse her repeated criminal behavior. We found the Applicant's conviction for felony forgery and DWI offenses were evidence that she poses a risk to public safety and that the remainder of her motor vehicle offenses demonstrated a persistent disregard for laws and the safety of others. We noted the Applicant's expression of remorse, contention that she has been rehabilitated, claimed completion of treatment programs, and submitted letters of support. Nonetheless we concluded that given her lengthy criminal history, the Applicant had not established her positive and mitigating equities overcome the seriousness of her criminal record, the risk she poses to the public, and her disregard for the laws of the United States. In addition, the letters of support did not indicate the authors' knowledge of the Applicant's arrests and convictions.

With the instant motion, the Applicant submits a brief; an updated personal statement; a criminal history printout for her previous partner; additional letters of support; a 2015 judge's order showing discharge from probation; school records for a daughter; and a birth certificate for the Applicant's child born in 2019. Although the Applicant submits additional evidence with the current motion, it remains insufficient to demonstrate her eligibility. Likewise, she has not established that our prior decision was based on an error of law or policy or was otherwise incorrect based on the record at the time of the decision.

On the instant motion, the Applicant argues through counsel that evidence was not given proper consideration, contending specifically that contrary to the Director's decision she did complete probation from a 2014 DWI, for which she re-submits a judge's order of "discharged from probation/conditional discharge." She also asserts that she has demonstrated lasting rehabilitation, has

connected with a social worker for social service needs, and now presents multiple letters of support from friends, colleagues, and professionals with knowledge of her criminal past yet fully support her.

In the updated personal statement, the Applicant reiterates that she is ashamed of her criminal past but that the root of her behavior was depression because she was mired in an abusive relationship when the crimes occurred, experienced trauma from abuse, and had no way to get help. The Applicant maintains that she decided she had to be stronger to protect her children and get out of relationships that hurt her, that she has come to terms with her past trauma, that she is working to ensure the cycle of abuse stops, and that she has moved on from that part of her life. She contends that her children need her emotionally, financially, and physically so will suffer hardship if she leaves. The Applicant further asserts that she fears returning to Mexico because an abusive former partner and father of one of her children was imprisoned for violating probation and has since returned to Mexico. The Applicant asserts that his mother has threatened her, blaming her for the imprisonment. With the motion, the Applicant submits a criminal case history summary for the ex-partner showing charges and convictions from 2004 and 2005 with a 2018 probation revocation and 18-month sentence.

On motion, the Applicant submits a letter from a county human services department supervisor, who indicates she assists non-citizens with accessing social services, states that the Applicant has made poor decisions and that lapses of judgment due to stress are common, but that the Applicant has accepted her actions, evolved from past mistakes, made efforts to rise above her tribulations, and is an upstanding member of her community. The writer opines that the Applicant has utilized tools needed to heal herself from trauma and that she will ensure that the Applicant has access to the social services the family needs.

The Applicant also submits on motion a letter from a school psychologist for two of her daughters who writes that the school faculty recognizes the Applicant's criminal history but sees the growth she made and observes that it is vitally important the children stay with their mother as separation from a parent is traumatizing, especially for a daughter with disability.² Letters from two family friends indicate they have known the Applicant for one year and are aware of her criminal history, discuss the Applicant's children, and express concern for them if the Applicant is denied residency. A coworker of five years writes that he knows of the Applicant's past mistakes with the law but describes her as dependable and respected. The president of a sports club where the daughters participate states that he has known the Applicant for two years and calls her dependable, conscientious, and hardworking. Another friend of one year states that she is aware of the Applicant's criminal charges but calls her a hard worker and honest. The Applicant's former employer states that he hired her even though she had disclosed her criminal history and that she proved to be a trustworthy employee, and that although she left after a few months to have a baby he would hire her again.

Although the additional letters of support submitted by the Applicant with the current motion indicate knowledge of her criminal history, the writers also indicate having known the Applicant for only a short time. The letter from the human services department supervisor makes general observations about the Applicant and that she has access to social services, but it provides little detail of the Applicant's behavior, her efforts at healing from trauma, or what services she requires or receives.

² The record shows that one daughter is on an Individualized Education Program.

We acknowledge the Applicant's contentions of suffering depression and abusive relationships at the time of her past conduct, but we find it does not justify her continued criminal behavior. Further, the record reflects that the Applicant's claim of abuse occurred in the period of about 2004 through 2006; however, the record also reflects her criminal activities spanned a period from about 2001 through 2014. The Applicant generally refers to bad relationships but has not described other periods of abuse that caused her to commit crimes over that extended a period of time such that would overcome the Director's discretionary determination.

We also acknowledge the Applicant's assertion of hardship to her children in her absence and that in a statement that was submitted on appeal she described how her children did not otherwise have relationships with their biological fathers and without her would be parentless. She further stated, however, that two of her daughters get along well with her current husband, although her oldest daughter, who is now an adult, does not.³ The Applicant does not explain how her current husband is unable to provide support for the children.

In sum, although the Applicant submits additional evidence with her motion, the evidence is not sufficient to demonstrate that the positive and mitigating equities in her case outweigh her criminal history such that she warrants a favorable exercise of discretion based on the totality of the evidence. Likewise, the Applicant has not established that our prior decision was based on an error of law or policy or was otherwise incorrect based on the record at the time of the decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

³ The record shows that the Applicant's oldest daughter was born in 2000 and a birth certificate of the Applicant's child born in 2019 lists her current husband as the father.