U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27548658

Date: AUG. 03, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Register Permanent Residence or Adjust 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 his "U" nonimmigrant status.

The Director of the Vermont Service Center denied the application, concluding that the record did not establish that the Applicant was in U nonimmigrant status at the time his Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), was received. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, they have been physically present in the United States for a continuous period of three years since the date of their admission as a U nonimmigrant and their continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. Implementing regulations further require that the U nonimmigrant "continue[] to hold such status at the time of [the filing of the U adjustment] application . . . ." 8 C.F.R. § 245.24(b)(2)(ii).

On motion, the Applicant contests the correctness of our prior decision. Our prior decision, incorporated here by reference, explained that the Applicant's U nonimmigrant status expired on July 27, 2020, and his U adjustment application was not properly received for filing until August 5, 2020. The Applicant had initially attempted to submit the U adjustment application on May 11, 2020, but his Form I-912, Request for Fee Waiver (fee waiver request), was denied by the Vermont Service

Center. Further, we noted that once the U adjustment application was returned to him, it was then incorrectly filed with the Nebraska Service Center on July 13, 2020, and the U adjustment application was returned to him 10 days after the rejection by the Nebraska Service Center. In support of the motion, the Petitioner relies on claims similar to those he submitted in support of his appeal. The Applicant again reiterates that he believes he properly completed the fee waiver request, and that the Vermont Service Center did not provide a reason for the denial of the request. The Applicant states that our decision indicated that the Nebraska Service Center "returned" his U adjustment application on July 23, 2020, but that was the day it was mailed back to him, and not when he received it, and that he did not receive the rejected application until after his U nonimmigrant status had expired. The Applicant also again contends that the Nebraska Service Center delayed returning the application to him, and states that had the Nebraska Service Center mailed his U adjustment application back to him in a timely fashion, he would have had time to send his application to the proper USCIS office.

However, the Applicant does not note any incorrect application of law or policy in our prior decision supported by pertinent precedent decisions, or any supporting statute, regulation, or statement of USCIS or Department of Homeland Security policy. 8 C.F.R. § 103.5(a)(3). As noted in our prior decision, 8 C.F.R. § 103.2(a)(7)(i) states that a benefit request will be considered received and will record the receipt date as of the actual date of receipt at the *location designated for filing* (emphasis added). On motion to reconsider, the Applicant has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.