



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

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

In Re: 29042137

Date: DEC. 12, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status of U Nonimmigrant

The Applicant seeks to become a lawful permanent resident based on their “U” nonimmigrant status. *See* Immigration and Nationality Act (the Act) section 245(m), 8 U.S.C. § 1255(m). The U classification affords nonimmigrant status to crime victims, who assist authorities investigating or prosecuting the criminal activity, and their qualifying family members. The U nonimmigrant may later apply for lawful permanent residency.

The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), concluding that the record did not establish she merits a favorable exercise of discretion. The Director then dismissed a motion to reopen and reconsider. We dismissed a subsequent appeal and then a motion to reconsider. The matter is now before us on combined motions to reopen and 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 reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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.

The Applicant asserts that we committed various mistakes of fact and law, and insufficiently weighed her favorable factors. The Applicant claims that she merits a favorable exercise of discretion. In our decision on the Applicant’s prior motion, which we incorporate here by reference, we discussed the Applicant’s conviction for conspiracy to commit pimping and pandering and her subsequent violation of the terms of her probation. We stated that our use, in the decision on the Applicant’s appeal, of the phrase “plead guilty” in relation to her probation violation was a *de minimus* error and would not alter our discretionary determination. The Applicant contends that our error in calling a probation violation a guilty plea is not a *de minimus* error, rather it is significant as it prejudices the assessment of her

criminal record. She then states that the record should be reviewed again in its entirety with the correct analysis of her criminal record and equities. We disagree with the Applicant's claim as she has not established that we incorrectly applied law or policy. We emphasized in our decision on the Applicant's prior motion that she was convicted of conspiracy to commit pimping and pandering, a felony under California law, and then violated the terms of her probation stemming from that conviction, a fact that is not in dispute. We considered the act of violating the terms of her probation as an unfavorable factor, regardless of whether she pled guilty, and gave it appropriate weight in the discretionary analysis. We are ultimately tasked with the balancing and weighing of the equities in a discretionary decision. 8 C.F.R. § 245.24(b)(6), (d)(11); *see also Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978).

Next, the Applicant contends that we erred by not giving sufficient weight to her evidence, and states she is submitting new facts that are supported by new evidence. The Applicant provides an updated brief which lists previously submitted evidence, and lists evidence that she is submitting with this motion. The new documentation being submitted includes her statement, her brother's statement, her friend's statement, and her employer's statement. The Applicant states that she is a single mother, she works six days a week, her whole family is in the United States, she has no family in Mexico, and she has not been in trouble since the last incident. The Applicant also mentions that her prior sexual abuse by her step-grandfather resulted in making bad choices and trouble with the law, her testimony against her step-grandfather led to his conviction, and she completed her probation in [] 2021. She then states that she is remorseful for her past choices, and she fears that her step-grandfather or an associate of his would harm her in Mexico. Additionally, the Applicant's brother, friend, and employer detail her positive qualities. We acknowledge the Applicant's statements related to her favorable factors and the new character letters. However, the record reflects that the Applicant made these statements and submitted similar character letters previously, they were considered as part of the discretionary analysis, and they do not establish that she now merits a favorable exercise of discretion.

The Applicant has not submitted new evidence sufficient to establish that she now merits a favorable exercise of discretion, in light of the favorable and unfavorable factors previously discussed. Therefore, she has not met the requirements for a motion to reopen. Furthermore, the Applicant has not established that our prior decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, she has not met the requirements for a motion to reconsider. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.