



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

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

In Re: 29693630

Date: DEC. 18, 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 Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), concluding that a favorable exercise of discretion was not warranted because the Applicant’s positive and mitigating equities did not outweigh the adverse factors in his case. We dismissed the Applicant’s appeal and a combined motion to reopen and reconsider on the same basis. The matter is now before us on motion to reopen. Upon review, we will dismiss the motion.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

The issue before us is whether the Petitioner has submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal. We find that the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal.

In our decision to dismiss the appeal, which we incorporate here by reference, we considered the favorable factors in the Applicant’s case but concluded that the Applicant had not demonstrated that he merited a favorable exercise of discretion to adjust his status to that of an LPR. We determined that the Applicant’s [redacted] 2016 arrest and subsequent conviction for Driving While Intoxicated (DWI) while in U status was both a serious crime and a significant adverse factor relevant to our consideration of whether the Applicant warranted a favorable exercise of our discretion. Moreover, the Applicant’s [redacted] 2016 arrest for the crime of assault while in U status was also viewed as a negative factor and representative of a public safety concern. We also agreed with the Director that the Applicant had not submitted sufficient evidence of rehabilitative efforts to indicate that he had made substantive changes to his behavior. Finally, we determined that a review of the Applicant’s statement did not show any real expression of remorse, genuine or otherwise, for his two DWI convictions for driving under the influence of alcohol as well as his other arrests both prior to and during the time he held U nonimmigrant status.

On motion, we again determined that the Applicant has not demonstrated that he merited a favorable exercise of discretion to adjust his status to that of an LPR. As detailed by the Director and this office, criminal conviction documents in the record indicated that the Applicant was arrested and convicted on two separate occasions for DWI, in 2007 and 2016. Furthermore, the Applicant's background check revealed numerous criminal charges. The Applicant's arrest history spanned many years, and notably, two of his most serious arrests, for DWI and assaulting a female, occurred while the Applicant was in U-1 nonimmigrant status.

With the instant motion, the Applicant again asserts that he merits a favorable exercise of discretion. He contends that he has accumulated additional time to prove that he has been criminally rehabilitated because he has not been accused of any new crime since his DWI arrest in 2016. He also contends that more than six years have passed since he completed his probation in [redacted] 2017. In support, the Applicant submits additional letters in support from his employer, two mayors, three religious leaders, a family friend, and his brother, attesting to the Applicant's character and work ethic. He also provides evidence that his spouse was granted U nonimmigrant status until October 2026, and a July 2023 certified criminal record search.

The arguments advanced on motion are not sufficient to overcome the discretionary denial of the Applicant's U adjustment application. As we acknowledged in our decision to dismiss the appeal, the favorable and mitigating factors in the Applicant's case include his victimization and assistance to law enforcement, lengthy residence in the United States, family ties, history of employment, some evidence of payment of taxes, the Applicant's financial support of his family, and the submitted letters of support from friends, co-workers, community leaders, his employer, and family members. We also afford favorable weight to the Applicant's affidavit submitted with a previous motion expressing remorse and regret for his past actions and stating that he no longer drinks alcohol; his church membership; the birth of his U.S. citizen child; his gainful employment and work ethic; and the hardships his family members, including his spouse, children, and brother, will experience if he is unable to remain in the United States.

However, notwithstanding these factors, the Applicant has not demonstrated on motion that he merits a favorable exercise of discretion to adjust his status to that of an LPR. As we have previously detailed, the Applicant was arrested and convicted on two separate occasions for DWI; DWIs pose a risk to public safety that is not inherent in other types of offenses. *See Matter of Siniauskas*, 27 I&N Dec. 207, 207 (BIA 2018) (finding DUI a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *see also Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (discussing the "reckless and dangerous nature of the crime of DUI"). Furthermore, the Applicant's background check revealed numerous charges, including three counts for operating a motor vehicle without a license; an arrest for breaking and entering and larceny after breaking and entering; an arrest for failure to disperse on command and resisting a public officer; an arrest for maintaining a vehicle/dwelling/place for controlled substance manufacture of cocaine and marijuana; and an arrest for assaulting a female. The Applicant's arrest history spans many years, and two of his most serious arrests, for DWI and assaulting a female, occurred while the Applicant was in U-1 nonimmigrant status. While we acknowledge the support letters provided previously and with the instant motion, they have limited probative value as none of the letters reference the Applicant's criminal history in any way.

The evidence submitted with the motion to reopen does not overcome our prior findings. While we acknowledge the positive factors in this case, as detailed in our previous decisions and above, the new evidence submitted on motion does not sufficiently impact the nature, recency, and seriousness of the Applicant's criminal history, such that he has met his burden to establish that he warrants adjustment of status to that of an LPR as a matter of discretion.

**ORDER:** The motion to reopen is dismissed.