U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24645557

Date: FEB. 6, 2023

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. The Director of the Vermont Service Center (Director) denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application). We summarily dismissed the Applicant's appeal and then dismissed two subsequent motions to reopen and reconsider, as well as another motion to reopen. The matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

To be eligible for adjustment of status as a U nonimmigrant, an applicant must establish, among other requirements, that they were lawfully admitted as a U nonimmigrant and continue to hold such status at the time of application. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(b)(2). In these proceedings, the burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.11(d)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). An applicant may submit any credible evidence for us to consider in our de novo review; however, we determine, in our sole discretion, the weight to give that evidence. 8 C.F.R. § 214.11(d)(5).

II. ANALYSIS

The Applicant, a native and citizen of Honduras, was granted U nonimmigrant status from June 25, 2013, until June 24, 2017. The Applicant initially filed his U adjustment application on June 19, 2017, and USCIS issued a rejection notice dated June 23, 2017, which informed the Applicant of the deficiencies in his filing. The Applicant resubmitted his U adjustment application on July 8, 2017.[1] The Director denied the U adjustment application, determining that he had not demonstrated that his adjustment of status to an LPR is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that he warrants a favorable exercise of discretion. The Director found that the Applicant's [redacted] 2015 arrest and charge for assault on a family member, while in U nonimmigrant status, outweighed his favorable and mitigating equities. We summarily dismissed his appeal. In dismissing the Applicant's subsequent motion to reopen and reconsider, we found that he did not overcome the Director's basis for denial. Specifically, we determined that due to the nature, severity, and recency of the Applicant's [redacted] 2015 arrest for assault on a family member while in U nonimmigrant status, a violent crime for which the judge found facts sufficient to warrant a finding of guilt, and for which significant discrepancies in the record remained, the Applicant did not demonstrate that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that he warrants a favorable exercise of discretion. In his subsequent motion to reopen, the Applicant provided documentation to support his claim that in relation to his arrest, he was not violent towards his spouse. However, we did not address this documentation and whether the Applicant merited a favorable exercise of discretion because the Applicant was not in U nonimmigrant status when he filed his U adjustment application. In the Applicant's most recent motion to reopen and reconsider, we again dismissed the motion because the Applicant was not in valid U nonimmigrant status at the time he filed his U adjustment application, and declined to discuss the discretionary factors concerning the Applicant's eligibility for adjustment of status.

As mentioned in our last three decisions, which we hereby incorporate by reference, the record reflects that USCIS initially rejected the Applicant's U adjustment application filing and issued a rejection notice dated June 23, 2017, which informed the Applicant of the deficiencies in his filing. Rejected applications and petitions do not retain a filing date. 8 C.F.R. § 103.2(a)(7)(i). The Applicant resubmitted his U adjustment application on July 8, 2017, and the Vermont Service Center erroneously accepted it for filing. As the Applicant's U nonimmigrant status expired on June 24, 2017, the record reflects that he was not in U nonimmigrant status, as required by 8 C.F.R. § 245.24(b)(2)(ii), at the time he filed his U adjustment application. And these facts have not been controverted.

In the instant motion to reconsider, the Applicant argues that we misapplied *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) and *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015). Specifically, the Applicant argues that in *Bagamasbad*, the Supreme Court upheld the Director's discretionary denial of the respondent's application to adjust status, which was denied based on misrepresentations made by the respondent at the consular interview. The Applicant notes that the adjudicator's exercise of discretion was not challenged, nor were the facts of the respondent's misrepresentation. Conversely, the Applicant has challenged the Director's findings concerning the Applicant's conduct. The Applicant argues that we abused our discretion by declining to consider important additional evidence that show the Applicant has overcome the allegations of his alleged violent conduct. At the outset, we note that in our decision dismissing his motion to reopen and reconsider, we did not consider the Applicant's alleged violent conduct and whether such conduct prohibited the exercise of discretion. Instead, we cited to *Bagamasbad* for the proposition that even if the Applicant overcame the negative

[1] We note that the Director erroneously cited June 19, 2017, as the Applicant's filing date in the decision issued on December 31, 2019.

factors in his record, it would not change the fact that at the time the Applicant's U adjustment application was accepted for filing, he was not in valid U nonimmigrant status. The Applicant further argues that *Matter of L-A-C-* is inapplicable because the respondent in that case lacked credibility and failed to provide corroborative evidence, while the Applicant provided substantive evidence to mitigate the alleged violent conduct which has not been reviewed or considered. However, as we previously stated, even if the Applicant were to overcome the discretionary basis for his denial, he is still faced with the statutory reason for his denial.[2] Therefore, our prior decisions were correct in their conclusion that the Applicant's U nonimmigrant status had expired prior to the filing of his U adjustment application. As such, the Applicant's arguments regarding our reliance on *Bagamasbad* and *Matter of L-A-C-* are unavailing. While the Applicant disagrees with our prior determination, he has not demonstrated that we erred in our previous decision based on the record then before us, or established that we misapplied relevant law or policy. As such, he has not satisfied the motion to reconsider requirements specified under 8 C.F.R. § 103.5(a)(3), and we will dismiss the instant motion to reconsider.[3]

ORDER: The motion to reconsider is dismissed.

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[2] A review of the Applicant's criminal history record shows that he was arrested for Assault on a Family Member on [redacted] 2022, in [redacted] Virginia. On [redacted], 2022, the Juvenile and Domestic Relations Court issued a disposition of nolle prosequi. The Applicant has not addressed this recent arrest in his filings. However, because the Applicant is otherwise ineligible for adjustment of status, a discussion of this arrest is unwarranted at this time.

[3] This decision is without prejudice to the filing of a new U adjustment application after the approval of an extension should the Applicant file a Form I-539, Application to Extend Nonimmigrant Status. *See* USCIS Policy Memorandum USCIS PM-602-0032.2, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)* 4, 9 (Oct. 4, 2016), https://www.uscis.gov/legal-resources/policy-memoranda.