U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23396054

Date: FEB. 22, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of 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 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) and dismissed a subsequent motion to reopen and reconsider. The Applicant filed an appeal of that decision with this office, which we dismissed. The Applicant now files this motion to reconsider and submits a brief and copies of previously submitted documents. Upon review, the motion will be dismissed.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if they meet all other eligibility requirements and, "in the opinion" of USCIS, their "continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." Section 245(m) of the Act. The applicant bears the burden of establishing their eligibility, section 291 of the Act, 8 U.S.C. § 1361, and must do so by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This burden includes establishing that discretion should be exercised in their favor, and USCIS may take into account all relevant factors in making its discretionary determination. 8 C.F.R. § 245.24(b)(6), (d)(11).

A favorable exercise of discretion to grant an applicant adjustment of status to that of an LPR is generally warranted in the absence of adverse factors and presence of favorable factors. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970). Favorable factors include, but are not limited to, family unity, length of residence in the United States, employment, community involvement, and good moral character. *Id.*; *see generally* 7 *USCIS Policy Manual* A.10(B)(2), https://www.uscis.gov/policy-manual (providing guidance regarding adjudicative factors to consider in discretionary adjustment of status determinations). However, where adverse factors are present, the applicant may submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.24(d)(11) (providing that, "[w]here adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate").

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.

II. ANALYSIS

The Applicant is a citizen of Mexico who entered the United States with a border crossing card as a tourist at ten years of age and never departed. In November 2011, the Director granted the Applicant U-1 nonimmigrant status as a victim of abusive sexual contact and sexual assault. The Applicant filed her U adjustment application in February 2015. The Director denied the application, concluding that the Applicant's positive and mitigating equities were outweighed by her arrest—while she held U nonimmigrant status—for Pimping and Pandering of a Minor over 16 for the purpose of prostitution, and Conspiracy to Commit Pimping and Pandering. As noted by the Director, this arrest occurred approximately one month before she filed her U adjustment application. Ultimately, the Applicant was convicted of Conspiracy to Commit Pimping and Pandering, a felony under the California Penal Code.[1]

Accordingly, the Director concluded the Applicant had not established that 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 warranted a positive exercise of discretion to adjust her status to that of an LPR. We dismissed the Applicant's subsequent appeal because she did not overcome this finding. Specifically, we determined that the Applicant had not established that the Director erred in concluding that her adverse factors outweighed the positive and mitigating equities and was incorrect based on the law and USCIS policy in effect at the time. Accordingly, we concluded that the Applicant had not established that her continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest.

On motion, the Applicant first asserts that the AAO "fabricated a second criminal conviction and facts that did not happen." This assertion is not supported by the record. In our prior decision, we observed that while on probation for her conviction for Conspiracy to Commit Pimping and Pandering, the Applicant missed required court dates and an arrest warrant was issued by the court. We noted that she was arrested again and pled guilty to the probation violation. The Applicant has not submitted any evidence to show that she did not plead guilty to the probation violation, other than her argument denying that she did not have a second criminal conviction. However, we did not conclude that the Applicant had a second criminal conviction. When an individual is on probation in California, and they violate the terms of their probation, that violation does not result in a conviction. It results in the court deciding to either continue the terms of the probation, revoke the probation, or change the terms of the probation. We noted that the Applicant violated the terms of her probation, a fact that is not in dispute. Even if the Applicant did not "plead guilty" to violating the terms of her probation, but instead admitted to doing so, our use of the phrase "plead guilty" is a *de minimus* error and would not alter the discretionary determination. The fact remains that the Applicant was convicted of Conspiracy to

[1] *See* California Penal Code §§ 182(A)(1) and 266i(a).

Commit Pimping and Pandering, a felony under the California law, and then violated the terms of her probation stemming from that conviction.

Second, the Applicant claims that the AAO did not sufficiently weigh the positive factors in her case.[2] This argument is unavailing because in our decision dismissing the appeal, we considered all the positive factors in the record. A determination of how much weight to give each positive factor is solely within our discretion. Therefore, while the Applicant may emphasize the importance of one or several particular pieces of evidence over others, 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).

Third, the Applicant asserts that the AAO did not address her concerns that she may be harmed by her perpetrator or his associates if she is returned to Mexico. The Applicant notes that although the perpetrator is scheduled to be imprisoned in the United States for decades, he is desirous of being extradited to Mexico where is he wanted for aggravated homicide, and that he will manipulate the Mexican legal system if he were to be extradited. In dismissing the Applicant's appeal, we acknowledged that the Director did not view this future scenario as a mitigating factor. We noted that the Director considered that the perpetrator's earliest possible parole would be in 2035, and if extradited, he would face a sentence of over 20 years in Mexico for an alleged act of aggravated homicide. In our decision, we acknowledged that the Applicant presented evidence of humanitarian, public interest, and family unity considerations, which would encompass her fears of returning to Mexico. While the Director did not view her concern about returning to Mexico as a mitigating factor, we did not discount the Applicant's concern even though it was speculative in nature.

In the end, the Applicant's submission does not meet the requirements for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Specifically, it does not establish that our prior decision was based on an incorrect application of law or USCIS policy, or that it was incorrect based on the evidence in the record of proceedings at the time of the decision. As such, the Applicant's U adjustment application will remain denied.

ORDER: The motion to reconsider is dismissed.

[2] We acknowledge that the Applicant submitted a letter from the Chief Probation Officer of the [redacted] County Probation Department dated May 12, 2022, which indicates that [redacted] County was no longer involved in the supervision of the Applicant because the probation matter was allowed to expire on February 7, 2021. Although this letter was submitted in connection with the appeal of her Form I-539, Application to Extend/Change Nonimmigrant Status in July 2022, we will consider it a positive equity as it relates to her eligibility for adjustment of status under section 245(m) of the Act.