



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

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

In Re: 20612297

Date: JAN. 19, 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 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 on the same basis. The matter is now before us on a combined motion to reopen and reconsider. 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). A motion to reconsider must establish that our 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). 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 Applicant has submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We find that the Applicant has not submitted new facts supported by documentary evidence sufficient to warrant reopening his appeal or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy.

On motion, the Applicant contends that we erred in dismissing his appeal because the humanitarian factors outweigh the negative factors in his case. He asserts that his U.S. citizen mother recently learned that she needs surgery and he is the only one who can provide her with daily support, including lifting her out of bed, taking her to the bathroom and back, cooking her meals, and helping her when she is in pain. He also maintains that he has no support in Mexico and would not be able to find employment there. The Petitioner expresses remorse for “everything I have done” and details that he attends church with his mother and participates in a program that has taught him to deal with stress.

In support, the Applicant submits medical records establishing his mother's treatment for "right lower extremity" pain and discomfort.

In our decision to dismiss the appeal we acknowledged numerous favorable and mitigating factors in the Applicant's case, including his family ties in the United States, his ongoing health struggles as a result of his stab wounds, and the critical role he played in caring for his elderly mother. We also acknowledged that if the Applicant had to return to his home country of Mexico, he and his U.S. citizen mother would suffer because he would lose access to needed medical care and his mother would lose her primary caregiver.

However, as we also detailed in our appeal dismissal, the Applicant's primary adverse factor is his extensive criminal history going back almost three decades and including repeated arrests and convictions in the past five years for driving under the influence of alcohol and related offenses.

The record indicates that in 1994, the Applicant was arrested and charged in [REDACTED] California, for driving without a license, driving under the influence (DUI), and child endangerment in violation of sections 23153(A) and 12500(A) of the California Vehicle Code (Cal. Veh. Code) and 273a(A)(1) of the California Penal Code (Cal. Penal Code), respectively. The one count of driving under the influence was dismissed pursuant to a plea negotiation, and he subsequently pled *nolo contendere* to driving without a license and child endangerment. He was placed on summary probation for 36 months, but after he failed to appear for a progress hearing and comply with other requirements, the Applicant's probation was revoked and reinstated with an additional 90 days of incarceration in the [REDACTED] Jail.

In [REDACTED] and [REDACTED] 1996 the Applicant was convicted theft in violation of section 484(a) of the Cal. Penal Code. He was referred to collection agencies after he failed to pay court-ordered restitution.

The Applicant was arrested in [REDACTED] 1998 in [REDACTED] for possession of a controlled substance in violation of section 11350(a) of the Cal. Health & Safety Code. The Applicant was subsequently scheduled for a diversion hearing and released on his own recognizance. The Applicant failed to appear for his diversion hearing and a bench warrant was issued. The Applicant was arrested in [REDACTED] on an outstanding warrant for possession of a controlled substance in [REDACTED] 1999. The Applicant pled not guilty and was referred to the probation department for deferred entry of judgment eligibility. The Applicant later pled guilty and was placed on deferred entry of judgment for 24 months. He was also ordered to pay restitution. At a subsequent progress hearing in [REDACTED] 2000, the Applicant tested positive for drugs and was warned that any further positive tests would result in termination of his deferred entry of judgment. The record indicates that the Applicant successfully completed probation in [REDACTED] 2001 at which time his case was dismissed.

In 2002, the Applicant was arrested and charged in [REDACTED] for possession of a controlled substance in violation of section 11350(a) of the Cal. Health & Safety Code. The Applicant pled not guilty and was released on his own recognizance. His case was referred for drug court evaluation and he was ordered to undergo an assessment at a local treatment center. The Applicant failed to appear for the assessment and a bench warrant was issued. The Applicant subsequently withdrew his not guilty plea and pled *nolo contendere* to one count of possession of a controlled substance. He was

sentenced to 36 months of formal probation and ordered to pay restitution and attend drug treatment including periodic drug testing.

The Applicant was arrested again in 2002 in [] for an outstanding warrant for possession of a controlled substance in violation of section 11350(a) of the Cal. Health & Safety Code. The Applicant pled *nolo contendere*. He was sentenced to 36 months of probation, ordered to pay restitution, attend substance abuse counseling, and submit to urinalysis testing when required to do so. The Applicant failed to appear at several subsequent progress hearings resulting in revoked probation and bench warrants. His probation was eventually reinstated with the modification of 180 days in the county jail with 30 days credited.

The Applicant was arrested in 2005 in [] on two outstanding warrants and for driving on a suspended driver license in violation of section 14601.2 of the Cal. Veh. Code. He pled *nolo contendere* to driving on a suspended license and was sentenced to 12 months of probation and 10 days of incarceration in the [] jail. He was also ordered to pay restitution, which was later referred to a collections agency after the Applicant failed to pay it. In 2008, the Applicant was arrested in [] for driving without a driver license in violation of section 12500(a) of the Cal. Veh. Code. The record is unclear whether this arrest resulted in additional charges or punishments. The Applicant was arrested in 2009 in [] Idaho, for driving under the influence in violation of section 18-8004 of the Idaho Code Annotated (Idaho Code Ann.). He later pled guilty and was subsequently sentenced to 41 days in the [] jail and his driver license was suspended for 90 days.

The Applicant was arrested in 2017 in [] Idaho for driving under the influence and alcoholic beverage-consume or possess open container by driver in violation of sections 18-8004(1)(A) and 23-505(2) of the Idaho Code Ann., respectively. The Applicant pled guilty to disorderly conduct and unlawful consumption of or possession of alcoholic beverage in a public place. He was sentenced to 90 days in the [] jail with 85 days suspended. He was given one day credit for time served and informed that he could convert four days in jail to 32 hours of public service with proof to the court within 90 days. He was also placed on one year of unsupervised probation, ordered to attend alcohol and drug treatment, and pay all applicable fines. The Applicant submitted evidence that he completed alcohol and drug treatment and public service in [] 2017.

The Applicant was arrested in 2019 in [] Idaho for driving under the influence (second offense within 10 years) in violation of section 18-8005(4) of the Idaho Code Ann. The Applicant was granted pre-trial release and ordered to comply with alcohol and drug monitoring. The Applicant was arrested again on two separate occasions in 2019 in [] Idaho for failing two blood alcohol tests.

Finally, the Applicant was arrested in [] 2020 in [] Idaho for revocation of bail-violations of conditions of release in violation of section 19-2919(1) of the Idaho State Code. He was booked into the [] Sheriff's Office and later released on bond.

The Applicant bears the burden of establishing that he merits a favorable exercise of discretion on humanitarian grounds, to ensure family unity, or as otherwise in the public interest. 8 C.F.R. § 245.45(d)(11). Upon review of the record, the Applicant has not made such a showing.

As we acknowledged in our decision to dismiss the appeal, the favorable and mitigating factors in the Applicant's case include his lengthy residence in the United States, family ties, and ongoing medical treatment for the stab wound he suffered in 1998. We further acknowledge on motion the hardship that the Applicant and his family, particularly his mother, would suffer if he was 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. Here, the record indicates that the Applicant was arrested approximately 21 times between 1994 and 2020. He pled guilty or *nolo contendere* to driving under the influence, theft, using false documents, possession of narcotics, shoplifting, driving on a suspended driver license, and criminal contempt of court. Most critically, the Applicant was arrested for driving under the influence in [redacted] in [redacted] 2017 and [redacted] 2019, both arrests occurring while he held U nonimmigrant status. Further highlighting the seriousness of the Applicant's criminal history, the record indicates, and he expressly acknowledges, his possession of a controlled substance and related arrests and convictions, and USCIS "will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of . . . multiple drug-related crimes, or where there are security- or terrorism-related concerns." 8 C.F.R. § 245.24(d)(11).

Additionally, although the Applicant expressed general remorse for his criminal history, beyond court records indicating that he successfully completed probation and alcohol and drug treatment that he was required to complete, the record contains scant evidence of his rehabilitation. *See Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991) (stating that an applicant for discretionary relief "who has a criminal record will ordinarily be required to present evidence of rehabilitation before relief is granted as a matter of discretion"). Rather, the record indicates that the Applicant was repeatedly arrested on bench warrants due to violations of his probation including failure to appear in court and noncompliance with court-ordered blood alcohol tests or assessments for alcohol and drug treatment.¹ Based on this recency and repeated nature of the Applicant's criminal history, he has not submitted sufficient evidence to establish his rehabilitation.

To summarize, the Applicant has an extensive criminal history including convictions for theft, using false documents, possession of narcotics, shoplifting, driving on a suspended driver license and criminal contempt of court (resulting in multiple bench warrants)—offenses which evidence a repeated disregard for public safety and the laws of the United States. The Applicant was also convicted of driving under the influence in 2017 and 2019 while he held U nonimmigrant status, both alcohol-related offenses and ones which posed a significant risk to others. While we acknowledge the positive and mitigating equities including the Applicant's family ties, lengthy residence in the United States, completion of court-ordered rehabilitation, and ongoing medical treatment for him and his mother, as established in the instant motion, they are not sufficient to establish that his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the severity and recency of his arrest history and criminal convictions while he held U nonimmigrant status. Consequently, the Applicant has not demonstrated that he is eligible to adjust his status to that of an LPR under section 245(m) of the Act.

¹ We note that medical records indicate that the Applicant was diagnosed with and referred for treatment for an alcohol use disorder as recently as [redacted] 2020.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.