U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27229745

Date: JULY 7, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant, who was previously granted "U" nonimmigrant status as a victim of qualifying criminal activity, seeks to adjust his status to that of a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). 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."

The Director of the Vermont Service Center denied the application, concluding that the Applicant's pattern of unlawful behavior, which showed a disregard for the laws of the United States and safety of others, was a significant negative factor that outweighed the positive equities in his case, such that a favorable exercise of discretion was not warranted in his case. We dismissed the Applicant's appeal and a subsequent combined motion to reopen and reconsider on the same grounds. The matter is now before us on a second motion to reconsider.

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 benefit sought; however, a motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Upon review, we will dismiss the motion to reconsider.

As discussed in our previous decision, which we incorporate here by reference, the record reflects that the Applicant has an extensive criminal history in the United States, including convictions for theft, use of false documents, possession of narcotics, shoplifting, driving under the influence, driving without or on a suspended license, and criminal contempt of court (which resulted in multiple bench warrants). Moreover, he was convicted twice of alcohol-related offenses while in U nonimmigrant status. In dismissing the Applicant's prior motion, we acknowledged that his family ties in the United States, lengthy residence in the country, completion of court-ordered rehabilitation program, as well

as his mother's and his own ongoing medical treatments were positive factors. Nevertheless, we concluded that they were not sufficient to mitigate the negative impact of his repeated offenses showing disregard for public safety and the laws of the United States. Consequently, we determined that given the severity and recency of his arrest history and criminal convictions the Applicant did not meet his burden of proof to establish that his continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest, and that he therefore did not warrant a grant of adjustment of status under section 245(m) of the Act as a matter of discretion.

The Applicant asserts that in dismissing his prior motion to reopen and reconsider we improperly gave substantial weight to his criminal history, because he disclosed all his arrests and charges in U visa proceedings and USCIS waived them by approving his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application). He further states that we failed to consider the disclosure and the waiver grant as mitigating factors in our discretionary analysis. In support, he references our 2018 decision in unrelated U adjustment proceedings.[1]

As an initial matter, that decision was not published as a precedent and therefore does not bind USCIS in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Furthermore, the Applicant's reliance on that decision is misplaced because, although we considered the disclosure of criminal history and approval of the noncitizen's waiver application as mitigating factors, we ultimately dismissed the appeal concluding that they were outweighed by the noncitizen's prior violations, such that a favorable exercise of discretion was not warranted.

Here, while we recognize that the Applicant's disclosure of his criminal history is a positive factor, we cannot give it significant weight as all U nonimmigrant visa applicants are required to disclose any arrests, citations, convictions, and detentions by law enforcement officers (including Department of Homeland Security (DHS), former Immigration and Naturalization Service (INS), and military officers).[2] Moreover, we previously addressed the assertions the Applicant raises in the instant motion. Specifically, in our decision on appeal we acknowledged that USCIS previously considered and waived some of the Applicant's criminal violations in granting him U nonimmigrant status and afforded positive weight to the waiver approval in our discretionary analysis. Nevertheless, a U adjustment application is a separate adjudication and USCIS is not bound by its prior decision concerning a waiver application. Rather, in making its discretionary determination in U adjustment proceedings, USCIS may take into account *all* relevant factors. 8 C.F.R. § 245.24(d)(11) (emphasis added).

As stated, the record shows, and the Applicant does not dispute that from 1994 through [redacted] 2020 he was arrested or cited by law enforcement on at least 21 separate occasions; five of those arrests occurred after he had been granted U nonimmigrant status and the related waiver application, and two of the charges resulted in convictions for alcohol related offenses.

[1] *Matter of J-A-I-L*, 2018 Immig. Rptr. LEXIS 3661.

[2] *See* Form I-918 (08/31/07) (as in effect when the Applicant filed for U nonimmigrant visa), Part 3, Questions 1.a.-h.; Form I-918 (Edition 12/06/21), Part 3. Questions 1.a.-3.f., https://www.uscis.gov/I-918.

Criminal tendencies reflected by a single serious crime or an active or long criminal record, including the nature, seriousness, recent occurrence of criminal violations, as well as lack of evidence of reformation of character and public safety concerns are significant negative factors. *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).

The Applicant does not cite any binding legal authority[3] or USCIS policy to show that we improperly applied this guidance in concluding that the positive equities in his case considered individually and cumulatively did not outweigh the extent of his criminal history and serious nature of his offenses, or that our determination that a favorable exercise was not warranted was otherwise incorrect based on the evidence in the record at the time we dismissed his prior combined motion to reopen and reconsider.

Consequently, the Applicant has not established a basis for us to reconsider our previous conclusion that he did not meet his burden of proof to show that he merits a grant of adjustment of status under section 245(m) of the Act as a matter of discretion when all relevant positive and negative factors are weighed together. His U adjustment application therefore remains denied.

ORDER: The motion to reconsider is dismissed.

[3] We acknowledge the Applicant's references to 5 U.S.C § 706(2) (the scope of judicial review of the final agency action) and the decision of the U.S. Court of Appeals for the Ninth Circuit, *Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency*, 966 F.2d 1292 (9th Cir. 1992). We note, however, that neither the statute nor the decision addresses the USCIS' exercise of discretion in adjustment proceedings under section 245(m) of the Act.