U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27155100

Date: JUN. 15, 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 application, concluding that the record did not establish that the Applicant had provided sufficient evidence regarding his criminal history, and he had not established that he warranted a favorable exercise of discretion. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will grant the motion to reopen and remand the matter for further proceedings. The motion to reconsider is moot.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

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).

In our previous decision, incorporated here by reference, we noted that the Petitioner had been arrested in [redacted] 2016, and initially charged with one count of Battery of a Spouse/Ex-Spouse/Date, etc. and one count of Willful Cruelty to a Child, and was convicted of Battery under California Penal Code 242 after a plea of nolo contendere. The imposition of the Applicant's sentence was suspended, and he was placed on probation for 3 years, ordered to complete a 52-week domestic violence program, and issued a no-contact order for the victim. The Applicant's appeal was dismissed, as he had not provided the relevant police or arrest records or provided a thorough account of the incident that led to his arrest.

On motion, the Applicant submits a brief, which asserts that the new evidence and facts establish eligibility, as they add context and information regarding his 2016 arrest and conviction for battery, and his conduct following the arrest and conviction. Notably, the Applicant now submits a copy of the police report from the [redacted] 2016 incident. Along with the report, he has submitted a statement from his former spouse and victim of the incident, L-A-S-.[1] In her statement, L-A-S- recalls her memory of the incident and compares it with the police report. In the Applicant's statement, he provides a similar recounting, and acknowledges that his behavior was a problem. The Applicant further discusses how he has changed, and notes that when he completed his 52-week domestic violence program, the judge in his case congratulated him for doing so.[2] The Applicant also notes that he has joint custody of his United States citizen daughter along with L-A-S-, and remains employed. The letters provided in support of his character discuss knowledge of the Applicant's arrest and how he has changed since then. The Applicant also submits a statement from L-A-S-'s son, letters from his employer and church, as well as articles regarding the prevention of adverse childhood experiences.

The record on motion includes additional evidence that is relevant to the Director's discretionary determination. Accordingly, we will remand the matter for the Director to review the evidence in the first instance and determine whether the Applicant has met his burden of establishing that a favorable exercise of discretion is warranted. We will grant the motion to reopen, and the motion to reconsider is moot.

ORDER: The motion to reopen is granted, and the matter remanded for entry of a new decision consistent with the foregoing analysis.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] We use initials to protect the identity of individuals.

[2] Evidence of the Applicant's completion of the domestic violence program was included in a response to the Director's request for evidence.