



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

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

In Re: 25215008

Date: MAR. 15, 2023

Motion on Administrative Appeals Office Decision

Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant

The Petitioner, who was granted lawful permanent residency based on their “U-1” nonimmigrant status, seeks immigrant classification of the Derivative as a qualifying family member. *See* Immigration and Nationality Act (the Act) section 245(m)(3), 8 U.S.C. § 1255(m)(3). The U classification affords nonimmigrant status to victims of certain crimes who assist authorities investigating or prosecuting the criminal activity. Individuals who gained their lawful permanent residency through their U-1 nonimmigrant status may seek lawful permanent residency on behalf of a qualifying family member who has never held derivative U nonimmigrant status if granting the immigrant status would avoid extreme hardship to the family.

The Director of the Vermont Service Center denied the Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant (U immigrant petition), concluding that the Petitioner did not establish the Derivative merits a favorable exercise of discretion. We agreed with the Director and dismissed the Petitioner’s appeal. The matter is now before us on a motion to reopen and reconsider. The Petitioner 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 dismiss the motions.

I. LAW

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 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 may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

Individuals who gain lawful permanent residency through their U-1 nonimmigrant status may seek lawful permanent residency on behalf of a qualifying family member who has never held derivative U nonimmigrant status if granting the immigrant status would avoid extreme hardship to the U-1 principal or the qualifying family member. Section 245(m)(3) of the Act; 8 C.F.R. § 245.24(g). Even if hardship is established, a petitioner bears the burden of proof to demonstrate that U.S.

Citizenship and Immigration Services (USCIS) should exercise its discretion and adjust the status of a qualifying family member. Section 245(m)(3) of the Act; 8 C.F.R. §§ 245.24(a)(2), (h)(1)(v).

USCIS may consider all factors when making its discretionary decision, including acts that would otherwise render a qualifying family member inadmissible. 8 C.F.R. § 245.24(h)(1)(v). Where adverse factors are present, a petitioner may offset these factors by submitting supporting documentation establishing mitigating equities. *Id.*

II. ANALYSIS

The Petitioner, a native and citizen of Nicaragua, received U-1 nonimmigrant status from October 2014 through September 2018. Subsequently, the Petitioner adjusted her status to lawful permanent resident. The Petitioner filed a U immigrant petition on behalf of the Derivative, her spouse, who is a native and citizen of Mexico. The Director denied the U immigration petition as a matter of discretion. In our prior decision, which we incorporate here by reference, we acknowledged and considered the favorable factors and mitigating equities in the case, including the Derivative's lengthy residence in the United States, his family ties, the support he provides his family, and the hardship they would experience if he was removed. However, we determined that these favorable factors and mitigating equities were outweighed by the nature, recency, and seriousness of his criminal history and insufficient evidence of his rehabilitation. Accordingly, we dismissed the appeal as the Petitioner did not demonstrate that the Derivative merits a favorable exercise of discretion.

On motion, the Petitioner asserts that we erred in evaluating evidence of the Derivative's rehabilitation. The Petitioner provides additional evidence on motion, including the Derivative's 2021 tax return, a court order terminating his probation in [REDACTED] 2022 for his assault in the second-degree conviction, and an article on offender risk and needs assessment. She states the Derivative merits a favorable exercise of discretion based on his favorable factors combined with his rehabilitation. Furthermore, the Petitioner asserts that we erred in citing to cases mentioning a probationer is more likely to engage in criminal conduct than an ordinary member of the community and enjoys reduced liberty. While we do not agree with the Petitioner, we note the record now includes evidence that the Derivative's probation for his assault in the second-degree conviction was terminated in [REDACTED] 2022.

Additionally, the Petitioner mentions the Derivative's conviction in 2019 was related to an arrest in [REDACTED] 2000, and therefore it was not recent criminal activity. Next, the Petitioner addresses the previously submitted psychological evaluation, dated May 2021, which states the psychologist reviewed all the Derivative's police reports and court documents, his judgment is good in terms of current lifestyle choices, and he consistently reported feeling remorseful for his criminal past. The Petitioner argues that this offsets the psychologist's statements that the Derivative provided only limited details regarding his criminal history, which we pointed out previously. The Petitioner states the Derivative is sober, is supported by her and his church, maintains steady employment, and is remorseful for his past behavior.

Lastly, the Petitioner claims the Derivative's Level of Service/Case Management Inventory (LS/CMI) from his psychological evaluation is an actuarial-based tool designed to classify offenders into levels of risk, and we erred in not considering the psychologist's findings that the Derivative had an LS/CMI

score indicating a very low risk to reoffend, his scores are most like those of typical members of the community, and he can maintain a very low risk to offend with a plan to address dynamic risk factors.

Upon review of the record, the evidence and arguments submitted on motion, while relevant, are not sufficient to overcome our prior discretionary denial. We acknowledge the Derivative's favorable factors and mitigating equities, including his lengthy residence in the United States, his family ties, the support he provides his family, and the hardship they would experience if he was removed. Additionally, the record now includes his 2021 tax return and evidence that his period of probation for his assault in the second-degree conviction ended in [REDACTED] 2022. However, the Derivative's favorable factors and mitigating equities do not outweigh his adverse factors, which include his immigration violations, criminal history, and insufficient evidence of rehabilitation. Regarding his immigration violations, the record reflects that the Derivative entered the United States in early 2009 without inspection, he was issued a final order of removal and was removed from the United States in [REDACTED] 2009, and he again entered the United States without inspection in June 2009. In considering a derivative's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offense(s). *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978). As discussed in our prior decision, the Derivative's multiple arrests on serious charges involving assault, corporal injury on a spouse/cohabitant, malicious destruction of property, theft, and vandalism, as well as his two separate convictions for assault, are significant adverse factors. We note the claim that the Derivative's second conviction for assault in January 2019 was based on having been arrested almost 20 years prior, however he had an outstanding arrest warrant for this case from [REDACTED] 2003 until [REDACTED] 2018, which is an adverse factor. The Derivative's charges involving, and/or convictions for, domestic violence or assault and his related convictions concern the very type of behavior that U nonimmigrant status seeks to protect against, further weighing against a favorable exercise of discretion in his case. See section 101(a)(15)(U)(iii) and 8 C.F.R. § 214.14(a)(9) (including, as qualifying criminal activity, "felonious assault" and "domestic violence"); see also Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007) ("In passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence . . . while offering protection to victims of such crimes."). In addition, the Derivative has not addressed our prior concern that his explanation of the circumstances giving rise to his two convictions for assault are inconsistent with that contained in the police reports. He still has not submitted sufficient evidence to explain, or otherwise address, these inconsistencies.

We note the Petitioner's claims related to the Derivative's rehabilitation. We acknowledge and give weight to his completion of probation in [REDACTED] 2022. Regarding the psychologist's statements and findings in May 2021, we previously noted the Derivative is at very low risk to reoffend. While the psychologist stated the Derivative's judgment appears to be good in terms of current lifestyle choices and he consistently reported feeling remorseful for his criminal past, the Petitioner still has not addressed several statements from the psychologist that were mentioned in our prior decision, including that the Derivative provided the psychologist only limited details regarding his criminal history, tended to omit information about his criminal history, minimized the significance of the events, portrayed himself in a more positive light than indicated by available records, and minimized his history of alcohol use as it pertained to past offenses. In addition, the record does not include a plan to address dynamic risk factors, which would allow the Derivative to maintain a very low risk to offend according to the psychological evaluation. Lastly, while attesting to the Derivative's positive

qualities, the letters of support submitted previously do not acknowledge or discuss his criminal background, and the Petitioner has not addressed this issue on motion. The Petitioner has not submitted sufficient evidence to establish, by a preponderance of the evidence, the Derivative's rehabilitation.

The Derivative's favorable factors and mitigating equities include his lengthy residence in the United States, his family ties to the county, the support he provides his family, the hardship they would experience if he was removed, and his completion of probation. However, these favorable factors and mitigating equities remain outweighed by his immigration violations, his criminal history, and insufficient evidence to establish his rehabilitation. As such, the Petitioner has not demonstrated that the Derivative merits a favorable exercise of discretion.

III. CONCLUSION

The Petitioner has not submitted new evidence sufficient to establish that the Derivative merits a favorable exercise of discretion. Therefore, she has not met the requirements for a motion to reopen. Furthermore, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy. Therefore, she has not met the requirements for a motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.