U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25427998

Date: MAR. 15, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status

The Applicant seeks to become a lawful permanent resident (LPR) under section 245 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of Status (adjustment application), concluding that the Applicant had not established her continuous physical presence in the United States during the requisite period or shown that she had complied or had not unreasonably refused to comply with, requests to provide assistance in the investigation or prosecution of the qualifying crime which formed the basis for her underlying U nonimmigrant status. The Applicant appealed the matter to us; we initially rejected the appeal and then reopened the matter on a service motion. We subsequently dismissed the motion. The matter is now before us on a combined motion to reopen and reconsider. Upon review, we will grant the motion to reopen and remand the matter to the Director for the issuance of a new decision.

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 her 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 submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal.

In our previous decision, incorporated here by reference, we affirmed the decision of the Director, concluding that the Applicant did not submit sufficient evidence to establish three years of continuous physical presence since her October 2016 admission as a U nonimmigrant.[1] The Director and this

[1] Since the identified basis for our denial was dispositive, we did not reach and reserved the Applicant's appellate arguments regarding her assistance in the investigation or prosecution of the crime on which the basis of her underlying U

office found that the record established the Applicant's physical presence during the relevant months of October 2016, April 2017, December 2017, September 2018, October 2018, December 2018, January 2019, April 2019, November 2019, March 2020, and March 2021, but it did not demonstrate her continuous physical presence in the United States continuously over the requisite three-year period.

On motion, the Applicant maintains that she has three years of continuous physical presence in the United States since her October 2016 admission as a U nonimmigrant. The Applicant's statement on motion provides that she has continuously resided in the United States since her first entry in October 2010 and has never departed the United States since that arrival. The owner/manager of the apartment building where the Applicant lives provides an October 2022 letter detailing that the Applicant signed a lease on August 1, 2015 and has lived in the unit continuously from the start of the lease to date. A letter from the Applicant's neighbor details that he has known the Applicant since she moved in next door to him in August 2016. The Applicant's friend for almost eight years attests that the Applicant has been residing in [redacted] California and has never left the country. In addition to the statements referenced, the Applicant submits traffic school invoices indicating a violation date of [redacted] 2016; a Secretary of State Business Programs Division Name Reservation Certificate addressed to her on May 25, 2018; a letter from her lawyer addressed to her on January 29, 2018; a document from her health insurance addressed to her on May 13, 2019 authorizing a medical procedure; a medical authorization notification addressed to her on December 5, 2018; an invoice for an automobile service from January 9, 2019; and a June 10, 2020 letter for a court hearing addressed to the Applicant. In light of this additional evidence, we find on motion that the Applicant has established three years of continuous physical presence since her admission as a U nonimmigrant as section 245(m) of the Act requires.

As noted above, the Director also denied the adjustment application because the Applicant had not established that she had complied, or had not unreasonably refused to comply, with requests to provide assistance in the investigation or prosecution of the qualifying crime which formed the basis for her underlying U nonimmigrant status. In the November 22, 2013 Form I-918, U Nonimmigrant Status Certification Supplement B (Supplement B), the certifying official stated that the Applicant possessed information concerning the criminal activity upon which the U nonimmigrant status was based, had been or was likely to be helpful in the investigation and/or prosecution of said criminal activity, had not unreasonably refused to assist in the criminal investigation and/or prosecution of the crime at issue, and "will testify in pending trial." The Applicant's U-1 status was consequently granted in October 2016. In response to the Director's request for evidence asking for documentation to establish that since U admission the Applicant had complied, or had not unreasonably refused to comply, with requests to provide assistance in the investigation or prosecution of the qualifying, the Applicant submitted a March 2, 2021, Supplement B that was partially incomplete.

On appeal, the Applicant maintained that the March 2021 Supplement B had "many parts within the form that were simply left blank" due to miscommunication at the certifying agency. The Applicant thus submitted a fully complete Supplement B, dated May 5, 2021 with her appeal. In that Supplement

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nonimmigrant status was formed. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

B, the certifying official confirms that the Applicant "has been collaborating since day one. For the safety of herself and her children, she has been doing her best to be helpful as much as she could" and "has never refused to provide assistance to the ongoing investigation and/or prosecution of the criminal activity" at issue. In light of this additional evidence, we find on motion that the Applicant has established she has not unreasonably refused to comply with requests to assist in the investigation or prosecution of the qualifying crime which formed the basis for her underlying U nonimmigrant status.

We conclude that the Applicant has overcome the basis for the denial of her U adjustment application. We will remand the matter for the Director to determine whether the Applicant has met the remaining eligibility criteria under section 245(m) of the Act.

ORDER: The motion to reopen is granted, and the matter is remanded to the Director for the entry of new decision.