U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27069099

Date: MAR. 16, 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 her derivative "U" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Adjust Status or Register Permanent Residence (U adjustment application), concluding that a favorable exercise of discretion was not warranted. We dismissed the Applicant's subsequent appeal and combined motion to reopen and reconsider, again as a matter of discretion. The matter is now before us on a second combined motion to reopen and reconsider. On motion, the Applicant submits a brief and copies of previously submitted evidence reasserting her eligibility for adjustment of status. Upon review, we will dismiss the combined motion to reopen and reconsider.

A motion to reopen must state new facts to be proved and be supported by affidavits or other 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 the law or U.S. Citizenship and Immigration Services (USCIS) policy, and that the decision was incorrect based on the evidence in the record 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).

With respect to the Applicant's request that we reopen the proceedings, the Applicant did not submit new facts supported by affidavits or other evidence that is material to our prior decision. The Applicant submits copies of the same evidence submitted in support of the prior appeal and combined motion to reopen and reconsider. Accordingly, the motion to reopen is dismissed.

In support of the instant motion to reconsider, the Applicant again asserts that we erred in relying on her arrest report when reviewing the positive and negative factors in the case because "they are inherently unreliable as evidence of what actually occurred." The Applicant again cites *Matter of Arreguin*, 21 I&N Dec. 38 (BIA 1995), claiming that arrest reports, absent corroborating evidence, are given extremely limited weight in discretionary determinations in immigration contexts. As we have previously explained, reliance on an arrest report in adjudicating discretionary relief is permissible provided that the report is inherently reliable and its use is not fundamentally unfair. *See e.g.*, *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) ("[T]he admission into the record of . . . information contained in the police reports is especially appropriate in cases involving discretionary relief . . . ,

where all relevant factors . . . should be considered to determine whether an [applicant] warrants a favorable exercise of discretion."). Further, the Board of Immigration Appeals has repeatedly affirmed that police reports are appropriate evidence of unfavorable conduct to be considered in discretionary determinations. *Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996); *Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995).

The Applicant further argues that she has established that she merits a favorable exercise of discretion "where all the evidence in the record subsequent to the grant of the waiver and U-Visa are solely positive equities." The Applicant observes that her 2007 arrest and conviction were subject to review on several occasions, including the adjudication her approved Form I-918, Petition for U Nonimmigrant Status, and her approved Form I-192, Application for Advance Permission to Enter as Nonimmigrant. She contends that we deemed the prior decisions as "wholly irrelevant." However, as we have previously stated, a U adjustment application is a separate proceeding and we are not bound by prior determinations, as section 212(d)(l4) of the Act and 8 C.F.R. § 212.17 (regarding waivers of inadmissibility for U nonimmigrants) articulates and implement a legal standard for a nonimmigrant status that is distinct from section 245(m) of the Act and 8 C.F.R. § 245.24(d)(11) (regarding the exercise of discretion for U adjustment applicants), which affords lawful permanent residency.

The Applicant has not established that our prior decision was based on an incorrect application of law or policy based on the evidence in the record of proceedings at the time of the decision, and she has not submitted new evidence to overcome the basis for our prior decision. Accordingly, the motion to reopen and reconsider will be dismissed, and the Applicant's application remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.