U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25516616

Date: MAR. 16, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of 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 his "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). The Director granted a motion to reconsider the denied U adjustment application and upheld the original denial of the Applicant's U adjustment application. We dismissed the Applicant's subsequent appeal. The matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that our 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 must dismiss a motion that does not satisfy the applicable requirements. 8 C.F.R. § 103.5(a)(4).

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." Section 245(m) of the Act. The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). This burden includes establishing that discretion should be exercised in an applicant's favor; USCIS may consider all relevant factors in making its discretionary determination. 8 C.F.R. §§ 245.24(b)(6), (d)(11).

A favorable exercise of discretion to grant an applicant adjustment of status to that of an LPR is generally warranted in the absence of adverse factors and presence of favorable factors. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970). Favorable factors include, but are not limited to, family unity, length of residence in the United States, employment, community involvement, and good moral character. *Id.*; *see also 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). However, where adverse factors are present, an applicant may submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.24(d)(11) (providing that, "[w]here adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate").

II. ANALYSIS

The Applicant, a native and citizen of Brazil, was granted U-1 nonimmigrant status from January 2017 to January 2021, and timely filed his U adjustment application in October 2020. In August 2021, the Director denied the Applicant's U adjustment application.

The Director acknowledged the positive equities present in the Applicant's case: his long-term residence in the United States, the presence of his lawful permanent resident spouse and four U.S. citizen children, the Applicant's gainful employment, and hardships to the Applicant and his family were he unable to remain in the United States. However, the Director determined that the positive and mitigating equities were outweighed by the adverse factor of the Applicant's criminal history. The Applicant was arrested in [redacted]2019 and charged with lewd or lascivious acts with child under 14-years-old, in violation of section 288(a) of the California Penal Code, and sending harmful matter to minor with sexual intent, in violation of section 288.2(a)(2) of the California Penal Code. The Director noted that because the charges against the Applicant had not been adjudicated by court of law and the charges were outstanding, the Applicant's criminal history raised serious adverse factors regarding the Applicant's disregard for public safety, the well-being of others, risk to the property of others, and disregard for U.S. laws, especially since the charges were based on evidence of conduct that occurred after the Applicant was approved for U nonimmigrant status. The Director concluded that the Applicant did not provide sufficient evidence 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 such that he warranted a favorable exercise of discretion to adjust his status to that of an LPR. The Applicant submitted a motion to reconsider. The Director granted the motion to reconsider the denied U adjustment application and upheld the original denial of the Applicant's U adjustment application.

In our prior decision, we adopted and affirmed the decision of the Director, finding the arguments advanced on appeal were not sufficient to overcome the discretionary denial of the Applicant's U adjustment application. We determined there was insufficient evidence to establish that the Applicant's arrest and the serious charges levied against him, while in U nonimmigrant status, should not be considered as adverse factors in his case or, alternatively, that lesser weight should be accorded to such evidence.

In support of his current motion to reconsider, the Applicant submits a brief, which argues the denial of the Applicant's U adjustment application is "arbitrary, fundamentally unfair and offends the protections of due process under the Fifth Amendment of the United States Constitution." The Applicant contends that our reliance on *Matter of Grijalva*, 19 I&N Dec. 713 (BIA 1988), for the principle that it is appropriate to consider police reports as evidence in cases involving discretionary relief, is in error, because in that case, the respondent was convicted of a crime, while the Applicant's criminal proceedings are still pending. Additionally, the Applicant argues it is fundamentally unfair

to consider the police report, because unlike the respondent in *Matter of Grijalva*, he has not made an admission of guilt to law enforcement authorities. However, *Matter of Grijalva* stands for the proposition that police reports are appropriate in cases involving discretionary relief from removal, which is applicable to the Applicant's case irrespective of whether his arrest results in a conviction. *See* 19 I&N Dec. at 721-22. 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 also asserts that we determined in our prior decision that he "committed the criminal acts of which he has been accused" and "this is an extrajudicial finding of guilt." Contrary to the Applicant's assertion, the record reflects that we acknowledged that the Applicant has not been convicted of the criminal charges brought against him, he maintains the allegations are false, and he pled not guilty. Regardless of the outcome of the arrest, USCIS may consider the totality of the record, which includes consideration of the whole of the Applicant's behavior. The lack of a final disposition for the 2019 arrest prevents us from assessing his behavior after either a final adjudication or the passage of time. Notwithstanding the positive and mitigating equities, due to the Applicant's arrest and the serious charges levied against him, while in U nonimmigrant status, the Applicant has not established that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that he warrants a favorable exercise of discretion.

III. CONCLUSION

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. As such, the Applicant has not demonstrated on motion that he merits a favorable exercise of discretion. Consequently, the Applicant has not demonstrated that he is eligible on motion to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The motion to reconsider is dismissed.