



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29460988

Date: JANUARY 5, 2024

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 for Adjustment of Status of U Nonimmigrant (U adjustment application), concluding that Applicant had not submitted 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. We dismissed the Applicant’s subsequent appeal and a motion to reopen and reconsider. The matter is now before us on a second motion to reopen and reconsider. On motion, the Applicant submits a brief. 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 dismiss the motion.

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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The scope of a motion is limited to “the prior decision” and “the latest decision in the proceeding.” 8 C.F.R. § 103.5(a)(1)(i), (ii). As we noted in our prior decisions, a favorable exercise of discretion to grant an applicant adjustment of status to that of LPR is generally warranted in the absence of adverse factors and presence of favorable factors.¹ However, where adverse factors are present, the applicant may submit evidence establishing mitigating equities, and we are permitted to consider how the Applicant’s previous arrests, violations, and convictions affect the determination of whether a favorable exercise of discretion is warranted.

In our prior decisions, we agreed with the Director that the Applicant’s recent criminal history after being granted U status to be of a sufficiently serious nature and evidencing of conduct that posed a risk to public safety. We also acknowledged the favorable and mitigating factors in the Applicant’s case, the Applicant’s declaration wherein he expressed remorse and regret for his past actions, and support letters attesting to the Applicant’s character and strong work ethic. However, we determined

¹ Matter of Arai, 13 I&N Dec. 494, 496 (BIA 1970).

that the Applicant had not demonstrated that he merits a favorable exercise of discretion to his criminal history which includes three arrests for being drunk in public, reckless driving related to drinking, and disorderly conduct after engaging in a violent and physical altercation while intoxicated – all occurring while the Applicant was in U-3 nonimmigrant status.

In the instant motion, the Applicant submits a brief wherein he reasserts that he sincerely repents for his actions and he has demonstrated true rehabilitation. He also reiterates his contention that we failed to follow applicable regulations relating to the favorable exercise of discretion as well as precedent which establishes that the mere existence of a criminal record does not warrant denial of an adjustment application. Here, the Applicant reasserts facts we have already considered and has not provided new evidence or established that our prior decision was based on an incorrect application of law or policy or that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.² Thus, he has not met the requirements for a motion to reopen and reconsider and the underlying application remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

² See, e.g., Matter of O-S-G-, 24 I&N Dec. 56, 58 (BIA 2006) (noting that “a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision”).