U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8545609

Date: JUNE 8, 2020

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status

The Applicant seeks to adjust status to that of a lawful permanent resident (LPR) based on his "U" nonimmigrant status. *See* Immigration and Nationality Act (the Act) section 245(m), 8 U.S.C. § 1255(m).

The Director of the Vermont Service Center denied his Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), concluding that the Applicant did not establish that adjustment of her status was warranted as a matter of discretion. We dismissed the subsequent appeal and our prior decision is incorporated here by reference. The matter is now before us on motion to reopen and reconsider.

On motion, the Applicant submits additional evidence and a brief asserting that she merits a favorable exercise of discretion. We will deny the motions to reopen and reconsider.

I. LAW

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 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).

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if she meets all other eligibility requirements and, "in the opinion" of USCIS, her "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 establishing her eligibility pursuant to section 291 of the Act, 8 U.S.C. § 1361, and must establish her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This burden includes establishing that discretion should be exercised in her favor, and USCIS may take into account all relevant factors in making its discretionary determination. 8 C.F.R. §§ 245.24(b)(6), (d)(11). 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 should submit evidence establishing mitigating equities. See 8 C.F.R. § 245.24(d)(11) (stating 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

In our previous decision on appeal, incorporated here by reference, we concluded that the Applicant did not merit a favorable exercise of discretion because her contacts with the criminal justice system did not outweigh her positive equities.

On motion, the Applicant contends that we misapplied the law and policy in failing to consider all of her favorable factors. Specifically, the Applicant asserts that we erroneously acknowledged three rather than four of her U.S. citizen children. We note that the Applicant did not identify or submit underlying evidence of her fourth U.S. citizen child, born in [redacted] 2019, to us until her present motion filing. We rely upon the evidence before us in considering the Applicant's appeal of her denial decision. On motion, the Applicant submits the birth certificate of her fourth child, her two U.S. citizen siblings, and the naturalization certificate of her U.S. citizen mother. The Applicant also claims that, in Mexico, her disabled children would not receive the same standard of care and likely face abuse and possible torture. The record contains an individual educational plan for one of the Applicant's children, for a language delay in preschool, and does not contain any other documentation of disabilities for any of her other children. In addition, the Mexico country conditions submitted by the Applicant detail investigations into facilities and institutions for disabled individuals but the there is no evidence that this would affect the Applicant's children.

On appeal, we acknowledged that the Applicant's positive equities included her family ties in the United States, employment, school enrollment, home ownership, payment of taxes, and the special needs of her children. Based on the evidence on motion, we further note that the Applicant's family ties to the United States include four U.S. citizen children, two U.S. citizen siblings, and a U.S. citizen mother. The record on motion also contains medical documentation for the Applicant's mother indicating that she sought pain management for back and leg pain for lumbar radiculopathy and lumbar spinal stenosis. The Applicant contends on motion that her mother also suffers from fibromyalgia, mononeuropathy, and diabetes, and that she takes her mother to regular appointments and helps her manage her health.

The Applicant contends that we misapplied *Matter of Marin*, 16 I&N Dec. 581, 588 (BIA 1978), asserting that we improperly discounted her equities. She cites to *Matter of Marin*'s statement that it has "never adopted a 'conclusive' time-based standard of reformation that creates an irrebutable presumption that a confined alien can never establish either that he is rehabilitated or that relief should otherwise be granted." *Id.* The Applicant claims that we improperly treated the passage of time since her last criminal contact as "a conclusive time-based standard of reformation." However, as stated on appeal, *Matter of Marin* also finds that multiple factors should be considered in exercising discretion,

including the "nature, recency, and seriousness" of the crimes. *Id* at 584-585. Though we ultimately determined that insufficient time had passed since the Applicant's probation sentence termination to demonstrate her rehabilitation, we did not determine an irrebutable presumption had been created based on the time period alone.

In addition, the Applicant contends that we improperly considered her criminal contacts, as she claims: 1) she was caught in a cycle of domestic violence and sexual abuse at the time of her juvenile battery arrest, and 2) she demonstrated remorse for her 2016 arrest and resulting convictions. As discussed in our previous decision, in 2017, the Applicant was found guilty of contributing to delinquency or dependency of a child, and two counts of driving under influence 0.15 or higher and passenger under 18 year of age. The Applicant was sentenced to five days of jail and 12 months of probation; her probation term ended in 2018. On appeal, we determined that the Applicant's statement to United States Citizenship and Immigration Services (USCIS) that she was convinced to have one drink at a party was contradicted by the half-full alcoholic beverage found in her vehicle. We concluded that this discrepancy called into question whether the Applicant was being forthcoming with USCIS, and had accepted responsibility for her actions. On motion, the Applicant asserts that no discrepancy exists, as she claims her friend insisted upon the Applicant taking an open "Four Loko" home with her. The Applicant further claims that the half-full drink was not hers, and she did not drink it. We do not conclude that the Applicant's motion statement overcomes the evidence that she imbibed a level of alcohol that raised her blood alcohol level 0.15 or higher, caused her to drive the wrong way on a street, and rendered her unable to stand without the assistance of police officers. The Applicant expresses that she "regret[s] what happened." But, the Applicant's claims do not demonstrate an acceptance of responsibility for her criminal actions that endangered herself, her minor children, and the public. Specifically, the Applicant continues to maintain that her criminal charges and convictions occurred because she was "convinced" by a friend "to try a drink," and that her "friend insisted that [she] take home a four loko drink."

Similarly, the Applicant claims on motion that she was the actual victim of her 2013 battery arrest. The Applicant was arrested for battery when she bit her live-in boyfriend on the arm and slapped his face while he was holding their two-month-old child. The police report indicates that the violence occurred because Applicant wanted her live-in boyfriend to take their two-month-old with him to the club, and he did not want their child to leave the home. After her boyfriend was bitten and slapped, he began to push the Applicant away from him, and she pushed him on the bed. The duty officer indicated that the report was drafted after speaking with the Applicant and her live-in boyfriend, who both provided a summary of the incident. The Applicant claims on motion that the police report is erroneous and posits that the discrepancy between her version of event on motion and the police report may be explained by the lack of an interpreter and her lack of fluency in English. The Applicant claims on motion that she became violent only because her boyfriend took her phone and would not allow her to call law enforcement, rather than his refusal to take their two-month-old to a club. The Applicant contends that she was the true victim of domestic violence battery, as the police report states that her boyfriend pushed her away after she bit and slapped him. We note that the Applicant did not make these contradictory assertions concerning her battery arrest in her initial application filing, or before us on appeal. We do not find the Applicant's 2019 statements to weigh more heavily than contemporaneously drafted police reports, and there is no indication other than the Applicant's speculation that the police officer was unable to understand the Applicant in 2013. We note the Applicant's submission of evidence that she was 17 years old and her boyfriend was 30 years old at

the time of birth of their first child, a second degree felony under the Florida Statutes; and that her boyfriend was also arrested for battery against her in 2015, when he pushed her against a wall after hearing she was out with another male instead of her sister. However, the Applicant's statements on motion do not overcome the Director's decision on discretion nor our decision on appeal.

After evaluating all evidence of favorable and mitigating equities in this case, including the new evidence submitted on motion, we do not determine that these equities offset the adverse factors. As stated, adjustment of status under section 245(m) of the Act is a discretionary benefit. Although the Applicant has established favorable equities that go towards humanitarian and family unity grounds, including her longstanding and strong ties in the United States since her last entry in 2012, her employment and payment of taxes, and the difficulties that would be faced upon her and her family's relocation to Mexico, she has not demonstrated that they outweigh the adverse factors such that her application merits a favorable exercise of discretion

III. CONCLUSION

The adverse factors in this case outweigh the positive equities. The Applicant has not satisfied her burden of establishing that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or otherwise in the public interest such that a favorable exercise of discretion would be warranted to adjust her status. Our prior decision is affirmed and her U adjustment application remains denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.