



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

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 6343927

Date: JUNE 30, 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 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 “U” nonimmigrant status as the victim of qualifying criminal activity. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (U adjustment application), concluding that a favorable exercise of discretion was not warranted. We dismissed the Applicant’s appeal and a subsequent motion to reopen. The Applicant now files a second motion to reopen and a motion to reconsider, submitting new evidence, resubmitting evidence already in the record, and arguing that we erred in the decision dismissing her motion to reopen. Upon review, we will dismiss the motions.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) “may adjust the status” of a U nonimmigrant if he or she meets all other eligibility requirements and “in the opinion” of USCIS, his or 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 eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This burden includes showing that discretion should be exercised in his or her favor. 8 C.F.R. § 245.24(b)(6), (d)(11). USCIS may consider all factors when making its discretionary decision on the application. 8 C.F.R. § 245.24(d)(11). Generally, favorable factors such as family unity, length of residence in the United States, employment, community standing, and good moral character may be sufficient to merit a favorable exercise of administrative discretion. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970); *see also* 7 *USCIS Policy Manual* A.10(B)(2), <https://www.uscis.gov/policymanual> (providing guidance to USCIS adjudicators regarding factors to consider in discretionary adjustment of status determinations). However, where adverse factors are present, the applicant may submit evidence of mitigating equities. 8 C.F.R. § 245.24(d)(11) (stating that, “[w]here adverse factors are present, an applicant may offset these by submitting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate”).

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Here, although the Applicant has submitted additional evidence with her motion, such evidence is not sufficient to demonstrate her eligibility. Likewise, the Applicant has not established that our prior decision was based on an error of law or policy, or was otherwise incorrect based on the record at the time of the decision.

II. ANALYSIS

In our previous decision dismissing the Applicant's motion to reopen, incorporated here by reference, we acknowledged and considered the new evidence the Applicant submitted, but concluded that the negative factors presented by the Applicant, including a 2009 criminal conviction for misdemeanor contributing to the sexual delinquency of a minor, the insufficient evidence of remorse or rehabilitation, her continued denial of culpability even though she previously admitted to committing the crime, and her status as a registered sex offender outweighed the positive and mitigating equities in her case. As such, we concluded that the Applicant had not met her burden of establishing that her continued presence was justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest and, accordingly, that a favorable exercise of discretion was warranted.

On motion to reconsider, the Applicant first argues, through counsel, that USCIS granted her U petition and underlying waiver application despite her criminal conviction and that, as a result, the dismissal of her appeal and motion based on the same was erroneous. The Applicant is correct to the extent she alleges that, as a general matter, a waiver of inadmissibility in connection with the underlying U petition under section 212(d)(14) of the Act may be considered as a mitigating factor during the adjudication of the subsequent U adjustment application. However, her adjustment application is a separate proceeding under section 245(m) of the Act and the question before us is whether the Applicant warrants a favorable exercise of discretion based on the totality of the evidence. *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS "may take into account all factors . . . in making its discretionary determination on the application"). As such, we are permitted to consider how the Applicant's previous criminal behavior, and her lack of acknowledgement of culpability affect the determination of whether her adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Notwithstanding the fact that the Applicant previously received a waiver and discretion was exercised in her favor, the negative factors in her case continue to outweigh the positive and mitigating equities such that she has not established that she merits a favorable exercise of discretion.

The Applicant next argues, again through counsel, that although she may have contributed to the sexual delinquency of a minor, it did not give that minor the right to later feloniously assault her. The Applicant contends that her victimization has caused her to endure significant hardship, and because of that hardship, her application should be granted. While remaining sensitive to the Applicant's

victimization, this argument does not establish error in our prior decisions because we previously considered the hardship the Applicant endured as a result of her victimization in determining that she had not met her burden of establishing that she warranted adjustment of status to that of LPR as a matter of discretion. Moreover, hardship is only one factor to consider in the exercise of discretion, and USCIS may take into account all factors. *See id.*

Lastly, the Applicant notes that she has complied with all terms of her plea agreement and probation, has attended therapy and counseling, and registers as a sex offender every year. She contends that her actions indicate she has rehabilitated and notes that she has petitioned to be removed from the sex offender registry. Borrowing from our analysis above, we previously acknowledged and considered as a mitigating equity the Applicant's effort toward rehabilitation and reform. Moreover, another factor of rehabilitation is accepting responsibility for one's actions. *See, e.g., Matter of Mendez*, 21 I&N Dec. 296, 304 (BIA 1996) (finding that taking responsibility and showing remorse for one's criminal behavior constitutes some evidence of rehabilitation); *Matter of Arreguin*, 21 I&N Dec. 38, 40 (BIA 1995) (finding that the applicant's acceptance of responsibility and achievements in prison are favorable indicators of efforts at rehabilitation). As discussed above, regarding her conviction for contributing to the sexual delinquency of a minor, the Applicant has not explicitly accepted responsibility for her actions and continues to deny culpability, despite pleading *nolo contendere* to the charge and previously admitting to the commission of the crime. These arguments again do not demonstrate any error in our prior decisions.

On motion to reopen, the Applicant submits an updated personal affidavit and a copy of her petition to be removed from the sex offender registry. She also resubmits other evidence already in the record, including documents related to her U petition and court documents related to her conviction for contributing to the sexual delinquency of a minor. In her updated personal affidavit, although the Applicant expresses remorse and guilt about her general interactions with the minor, she does not directly address her culpability for her criminal conviction or the specific actions which led to her being arrested and charged with 30 counts of either sexual abuse or contributing to the sexual delinquency of a minor. The petition requests the Applicant's removal from the state sex offender registry, but the Applicant has not submitted evidence establishing the outcome of the petition. In the end, the new evidence submitted on motion does not lessen the seriousness of the Applicant's criminal history or her continued denial of culpability, which are negative factors outweighing the positive and mitigating equities present in her case such that she has not established that she warrants a favorable exercise of discretion based on the totality of the evidence.

III. CONCLUSION

The Applicant has not submitted new evidence that establishes her eligibility for adjustment of status under section 245(m) of the Act. Moreover, she has not demonstrated any error of law or policy in our decision dismissing her appeal.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.