



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

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

In Re: 31049441

Date: APR. 08, 2024

Motion on Administrative Appeals Office Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to become a lawful permanent resident (LPR) based on her “U” nonimmigrant status as a victim of qualifying criminal activity under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m).

The Director of the Vermont Service Center denied the application, concluding that the record did not establish that a positive exercise of discretion to approve the application was warranted. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

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 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Applicant contests the correctness of our prior decision, arguing that she established discretion should be exercised favorably in her case. In support of the motion, the Applicant relies on prior non-precedent decisions from our office, that reached favorable discretionary determinations. The Applicant broadly asserts that “USCIS abused its discretion based on the relevant statutes, regulations, and case law.” The Applicant notes that she has only one negative factor, her arrest and conviction in 2021. She highlights that this criminal history “has no bearing whatsoever on admissibility to the United States.” In support, she cites two circuit court decisions discussing whether certain criminal offenses meet the definition of a crime involving moral turpitude (CIMT). *See Hernandez-Cruz v. AG*, 764 F.3d 281 (2014); *Mohamed v. Holder*, 769 F.3d 885 (4th Cir. 2014).

Although the Applicant has generally cited the standards applicable to this case, she has not specified which portion of our prior decision was contrary to established law or policy. Rather, the Applicant

appears to ask us to re-examine the positive and negative discretionary factors in the case and reach a different conclusion. We have reviewed the Applicant's contention that her arrest and conviction do not impact her admissibility. However, our prior decision not to exercise discretion favorably was not based on the Applicant's inadmissibility, whether for a CIMT or otherwise. Rather, we evaluated the applicant's criminal history as an overall negative factor in the discretionary analysis, and we considered this history alongside the positive equities in the case. We considered the recency and severity of the criminal offense, highlighting that the arrest occurred while the Applicant was in U nonimmigrant status and that she was still serving a period of probation when her appeal was decided. We also examined whether the record showed sufficient rehabilitation, remorse, and a complete accounting of the underlying criminal acts. When balancing the Applicant's positive equities to the negative factors present in the case, we determined that an exercise of discretion to approve the application was not justified on humanitarian grounds, to ensure family unity, or in the public interest. 8 C.F.R. § 245.24(b)(6).

Ultimately, our prior decision fully considered the positive equities the Applicant highlighted on appeal and reiterates on motion. As the Applicant concedes on motion, USCIS may take into account "all factors, including acts that would otherwise render the applicant inadmissible" when considering whether to grant a benefit in the exercise of discretion. 8 C.F.R. § 245.24(d)(11). While this regulatory language instructs us to consider factors that may result in inadmissibility, we are not limited to considering only negative factors that also result in inadmissibility. *Id.* Here, considering the Applicant's criminal history as an overall negative factor that precluded a positive exercise of discretion was appropriate.

On motion to reconsider, the Applicant has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.