



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

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

MATTER OF J-A-R-A-

DATE: DEC. 24, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE
OR ADJUST STATUS

The Applicant, who was granted U-3 nonimmigrant status, seeks to adjust his status to lawful permanent resident. *See* Immigration and Nationality Act (the Act) § 245(m), 8 U.S.C. § 1255(m). The Director, Vermont Service Center, denied the application and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

I. APPLICABLE LAW

Section 245(m) of the Act states, in pertinent part:

(1) The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E), unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if --

(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U); and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

The regulation at 8 C.F.R. § 245.24 provides, in pertinent part:

(b) *Eligibility of U Nonimmigrants.* Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:

- (1) Applies for such adjustment;
 - (2) (i) Was lawfully admitted to the United States as either a U-1, U-2, U-3, U-4 or U-5 nonimmigrant, as defined in 8 CFR § 214.1(a)(2), and
 - (ii) Continues to hold such status at the time of application; or accrued at least 4 years in U interim relief status and files a complete adjustment application within 120 days of the date of approval of the Form I-918, Petition for U Nonimmigrant Status;
 - (3) Has continuous physical presence for 3 years as defined in paragraph (a)(1) of this section;
 - (4) Is not inadmissible under section 212(a)(3)(E) of the Act;
 - (5) Has not unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status, as determined by the Attorney General, based on affirmative evidence; and
 - (6) Establishes to the satisfaction of the Secretary that the alien's presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest.
- (c) *Exception.* An alien is not eligible for adjustment of status under paragraph (b) of this section if the alien's U nonimmigrant status has been revoked pursuant to 8 CFR § 214.14(h).

II. FACTS AND PROCEDURAL HISTORY

On May 7, 2010, the Director granted U-3 nonimmigrant status to the Applicant based upon an approved Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, filed by his mother on his behalf. The Applicant filed the instant Form I-485, Application to Register Permanent Residence or Adjust Status, on October 15, 2013. The Director issued a notice of intent to deny (NOID), seeking, in part, further evidence of positive equities to support a favorable adjudication of the Form I-485. The Applicant responded to the NOID with additional evidence, which the Director found insufficient to establish eligibility. The Director denied the application, finding as a matter of discretion that the Applicant was not eligible to adjust status. We dismissed a subsequent appeal. The Applicant timely filed the instant motion to reopen and motion to reconsider.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was

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based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, the Applicant submits a statement and additional evidence. We review these proceedings *de novo*. The motions will be denied for the reasons discussed below.

III. ANALYSIS

In our previous decision, we reviewed the negative factors in this case, including the Applicant's six arrests between 2009 and 2012, his three juvenile delinquency adjudications, and his conviction for attempted first degree burglary. We explained that, although an act of juvenile delinquency is not a criminal conviction on which to base removal or bar relief from removal, a juvenile offense is relevant to our discretionary determination.¹ Additionally, we explained that the Applicant's conviction for burglary, which was vacated for rehabilitative purposes, still remains a conviction for immigration purposes.² We reviewed the favorable equities for the Applicant, including the early termination of the Applicant's probation, his residence in the United States since the age of five, close family ties in the United States, positive contributions to his family's financial and emotional stability, continuing employment, education, efforts at rehabilitation, and expressed remorse for the crime. We found, nevertheless, that the negative factors outweighed the positive, and that the Applicant's adjustment of status was not warranted for humanitarian reasons, for family unity, or was otherwise in the public interest.

On motion, the Applicant reiterates that the criminal court vacated his conviction for burglary, and terminated his probation before the full three-year term. He states that when he was released from jail he went back to school, received his GED (high school equivalency certificate), and started working. The Applicant explains that he financially supports his mother and younger siblings, and has not committed any offenses since 2012. The Applicant resubmits the October 17, 2014, order to vacate his conviction from the Superior Court of California, [REDACTED] and the related transcript of proceedings. The Applicant also submits the [REDACTED] Deputy Probation Officer's recommendation for the early termination of his probation.

Although we acknowledge that the Applicant's burglary conviction has been vacated, as discussed, his vacated conviction remains a conviction for immigration purposes, and is relevant to our analysis. The Applicant has a pattern of arrests as a juvenile, three juvenile delinquency adjudications, and he was convicted of the burglary offense as an adult. He has not addressed our concerns about the short period of time that has passed between the commission of the burglary

¹ See *Wallace v. Gonzales*, 463 F.3d 135 (2d Cir. 2006); see also 8 C.F.R. § 245.24(d)(11).

² A conviction that is vacated as a result of a substantive or procedural defect is no longer considered a conviction for immigration purposes, but a conviction that is vacated for rehabilitative, or immigration hardship reasons remains a conviction for immigration purposes. See *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003), *rev'd on other grounds*, *Pickering v. Gonzales*, 465 F.3d 263, 266 (6th Cir. 2006).

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offense in 2012, and the filing of the Form I-485 on October 13, 2013. At the time of filing the Form I-485 and the filing of the appeal, the Applicant remained on probation. Given the Applicant's latest conviction and the minimal amount of time that has passed since his probationary status, the Applicant has not sufficiently demonstrated that he has been fully rehabilitated.

When viewed in their totality, the negative factors in the present case outweigh the positive factors. Accordingly, the Applicant has not demonstrated that he is rehabilitated or that his adjustment of status is warranted for humanitarian reasons, for family unity, or is otherwise in the public interest.

IV. CONCLUSION

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b),(d). Here, that burden has not been met as to the Applicant's eligibility to adjust status under section 245(m) of the Act.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of J-A-R-A-*, ID# 14824 (AAO Dec. 24, 2015)