U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33711237

Date: SEP. 12, 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 based on her derivative "U" nonimmigrant status as the child of 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 Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (U adjustment application), and we dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and 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 motions.

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). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

In our previous decision, incorporated here by reference, we informed the Applicant that although the Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient (derivative U petition) was approved from September 20, 2016, to September 19, 2020, U.S. Customs and Border Protection admitted her in U-3 status until September 30, 2019 – the date her mother's status expired. Although we acknowledged the Applicant's contention that her Form I-797, Notice of Action, indicated that she was granted from September 20, 2016, to September 19, 2020, we concurred with the Director that her U-3 status had expired prior to the filing of her U adjustment application on January 24, 2020.

On motion, the Applicant submits a brief and additional evidence. In her brief, the Applicant contends that U.S. Citizenship and Immigration Services (USCIS) at some point changed the policy of accepting

the dates on Form I-797 and provides a "Practice Pointer" from a third-party organization. Notably, although this document contends that USCIS changed its policy, it does not provide any Policy Memorandum reference or change in regulation issued by USCIS as it would relate to the Applicant's filing. Further, the Practice Pointer itself informs an applicant who finds themselves in a position similar to the Applicant's to file a Form I-539, Application to Extend/Change Nonimmigrant Status prior to the expiration of the date provided on the I-94. Although the Applicant attached an email from the Vermont Service Center informing an individual requesting information on an unrelated case that the date on the I-797 would be accepted, this is not an official communication relating to the Applicant's case. The Applicant further contends that she has family members whose U adjustment applications were approved under similar circumstances where their U status had expired prior to the filing of their U adjustment applications; however, the matter of those applications is not before us, and their approval does not indicate that our prior decision was issued in error.

The Applicant further asserts that an applicant's U nonimmigrant status is extended by the filing of the U adjustment application, and that after filing, she received an I-797 notifying her that her status had been extended. However, as we have noted, the Applicant's U-3 status had expired at the time her U adjustment application was filed, and the Applicant does not provide reference to any policy or precedent decision that indicates that U status is extended for those applicants whose status expired prior to the filing of their U adjustment application. Much of the support the Applicant relies on in her motions informs an applicant to file the Form I-539 in order to extend their U status. The Applicant did not file a Form I-539 until after we had issued our decision dismissing her appeal, and it remains pending at the time of this decision.

Finally, the Applicant asks us to exercise discretion and conclude that her status expired resulting from a delay due to extraordinary circumstances beyond her control, as found at 8 C.F.R. § 214.1(c)(4). This regulation relates to the adjudication of her Form I-539, and as such, we do not exercise jurisdiction over this matter. Although the Applicant has submitted additional evidence in support of the motion to reopen, the Applicant has not established eligibility. 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 reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.