



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

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

In Re: 22316709

Date: AUG. 11, 2022

Appeal of Nebraska Service Center Decision

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

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 his “U” nonimmigrant status. The Director of the Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), concluding that a favorable exercise of discretion was not warranted because the Applicant’s positive and mitigating equities did not outweigh the adverse factors in his case. The Director subsequently denied a motion to reopen and reconsider. The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and a brief reasserting his eligibility. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, the appeal will be dismissed.

**I. LAW**

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if they meet all other eligibility requirements and, “in the opinion” of USCIS, their “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 their eligibility, section 291 of the Act, 8 U.S.C. § 1361, and must do so 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 their 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).

A favorable exercise of discretion to grant an applicant adjustment of status to that of LPR is generally warranted in the absence of adverse factors and presence of favorable factors. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970). 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 determinations). However, where adverse factors are present, the applicant may 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

The record reflects that in November 2013, the Applicant's mother filed a Form 1-918, Supplement A, Petition for Qualifying Family Member of a U-1 Recipient (U derivative petition), on his behalf. In November 2016, USCIS granted the Applicant “U-3” nonimmigrant status from November 2016 until November 2020. The Applicant timely filed the instant U adjustment application in October 2020. A review of the Applicant’s record revealed that he had been arrested in [ ] 2021 for inflicting corporal injury to spouse or cohabitant. As a result, the Director issued a request for evidence (RFE) for, among other things, original or certified copies of the arrest documentation to include the arresting officer’s report, charging documents, court disposition records, as well as completion of any sentence and a statement regarding the arrest. In response, the Applicant provided a case summary regarding his [ ] 2021 arrest and statements from himself, his partner and his partner’s family members recounting the incident. The Director acknowledged this evidence, but concluded that it was insufficient to determine whether the Applicant was a risk to public safety. The Director then denied the application, concluding that the Applicant had not demonstrated that his adjustment of status to that of an LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest because the severity of crime for which he was arrested, coupled with the unknown circumstances leading to the arrest, outweighed the positive factors in his case. The Applicant has not overcome this determination on appeal.

### A. Favorable and Mitigating Equities

The Applicant is 22 years old and has lived in the United States for 16 years, since he was five years old.<sup>1</sup> The Applicant’s family ties in the United States include his mother and brother.<sup>2</sup> He submitted a personal statement in which he recounted his adjustment to life in the United States. He stated that he was the first person in his family to graduate from high school and hopes to attend college in the future. He further stated that he has a close and loving relationship with his mother and brother whom he has encouraged to continue his education. He submitted evidence of stable employment as a stocker, painter and roofer and payment of taxes in 2018 and 2019. In statements from the Applicant’s family members, friends and teachers, he is described as loving son and brother and a conscientious student. The Applicant maintains that he has been a good person and strives to be a productive member of society for his family and the people around him. He asks us to reconsider the denial of his U adjustment application in order to remain in the United States with his family, friends and community.

On appeal, the Applicant resubmits an Incident/Investigation Report from the [ ] California Police Department regarding his [ ] 2021 arrest and his personal statement from November 2021.

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<sup>1</sup> The Applicant departed the United States in 2012 and reentered without inspection or parole in 2013. He was apprehended by U.S. Customs and Border Patrol and placed into removal proceedings in [ ] 2013. An Immigration Judge later terminated proceedings in February 2019 based on the Applicant’s grant of U nonimmigrant status.

<sup>2</sup> The immigration status of the Applicant’s mother and brother is unclear.

## B. Adverse Factors

The Applicant's primary adverse factor is his criminal history. The record reflects that, in [REDACTED] 2021, the Applicant was arrested in [REDACTED] California for inflicting corporal injury to spouse or cohabitant in violation of section 273.5(a) of the California Penal Code (Cal. Penal Code). According to the [REDACTED] Police Department incident/investigation report, a police officer responded to a report of a domestic disturbance. The Applicant's partner recounted that the Applicant was sleeping in her bedroom when she went to wake him because dinner was ready. According to her, the Applicant woke up startled because he worked long hours and "accidentally" struck her in the face with his hand. When she asked the Applicant why he struck her, he told her that it was an accident and to "not wake him up like that." They then argued after she asked him about another woman that he had been talking to. During the argument, the Applicant's partner became very anxious and started scratching at her arms. The Applicant tried to physically control her to stop her from scratching her arms and the argument stopped. The Applicant's partner later voluntarily left the apartment with the Applicant. The police officer noted that the Applicant's partner had "substantial swelling near her right eye that was red and swollen." However, she refused medical attention telling the officer that the situation was "not a big deal." The police officer then spoke to the Applicant. He told the officer that he was sleeping in the bedroom when his partner woke him to address him talking to another woman. He claims that, at the same time, he received news that his father and his grandmother had COVID-19, and that his grandmother was not going to make it. The Applicant confirmed that there was a physical altercation. He stated that he slapped his partner in the face when she was "coming at him" about talking to another woman. He also confirmed to the police officer that the slap was intentional. Based on his investigation, the police officer determined that the Applicant was the dominant aggressor and placed him under arrest. Upon learning this, the Applicant's partner became enraged and insisted that the Applicant had lied about what had occurred. The police officer noted in his report that it was clear from his interaction with the Applicant's partner that she was upset that the Applicant had been arrested and would not cooperate with any further investigation into the incident. The Applicant was subsequently arrested for inflicting corporal injury to spouse or cohabitant. However, he was never formally charged. He submitted a Case Summary from the Superior Court of California, [REDACTED] indicating that no charges were filed and a Detention Certificate from the [REDACTED] Police Department indicating that "[a]t the time of arrest, there was probable cause by the arresting agency for the arrest." However, the Applicant's arrest was ultimately deemed to be a detention only after the District Attorney's Office and the victim declined prosecution.<sup>3</sup>

The Applicant briefly addressed the [REDACTED] 2021 incident in a statement submitted before the Director. He emphasized that the [REDACTED] 2021 incident "taught him to have self-control, not to engage with other people when [he] or others are angry or upset, and to have boundaries when living with other family members to avoid miscommunication and confusion." He stressed that the [REDACTED] 2021 incident would not have happened if he had not been so upset about his grandmother's sickness and unavoidable death.

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<sup>3</sup> Section 851.6 of the Cal. Penal Code provides in part that, "[i]n any case in which a person is arrested and released pursuant to paragraph (1), (3), or (5) of subdivision (b) of Section 849, the person shall be issued a certificate, signed by the releasing officer or his superior officer, describing the action as a detention."

C. A Favorable Exercise of Discretion is Not Warranted Based on Humanitarian Grounds, to Ensure Family Unity, or in the Public Interest

The Applicant bears the burden of establishing that he merits a favorable exercise of discretion on humanitarian grounds, to ensure family unity, or as otherwise in the public interest. 8 C.F.R. § 245.45(d)(11). Upon *de novo* review of the record, as supplemented on appeal, the Applicant has not made such a showing.

We have considered the favorable and mitigating equities in this case. We acknowledge the Applicant's lengthy residence in the United States, family ties, educational accomplishments, stable employment and payment of taxes. However, notwithstanding these factors, the Applicant has not demonstrated that he merits a favorable exercise of discretion to adjust his status to that of an LPR.

In the decision below, the Director determined that the adverse factors outweighed the positive and mitigating equities in the Applicant's case. On appeal, the Applicant asserts, through counsel, the Director erred by elevating a single alleged incident that did not result in criminal charges over a lifetime of positive and mitigating equities. He further notes the incident/investigation report he submitted on appeal, which "provides[s] all of the surrounding circumstances to determine whether [the Applicant's] solitary adverse factor warrants a finding that he is a danger to public safety or if [it] was an isolated incident that is unlikely to repeat."

We acknowledge that the Applicant was not prosecuted for inflicting corporal injury to spouse or cohabitant in California. However, an applicant need not have been charged or convicted of a crime in order for us to consider his conduct in our discretionary determination. *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination and that it "will generally not exercise its discretion favorably in cases where the applicant has *committed* or been convicted of" certain classes of crimes)( emphasis added). In this case, the Applicant admitted to a police officer that he was involved in a physical altercation with his partner during which he intentionally slapped her. We also note that, a lieutenant from the [redacted] Police Department could have marked the box on the Detention Certificate indicating that the Applicant was only detained, but released after his arrest, because there was "no ground for making a criminal complaint." Instead, as stated above, the lieutenant indicated that the Applicant was only detained because the District Attorney's Office and the Applicant's partner declined prosecution. The Applicant does not dispute that he engaged in this conduct, and there is no evidence in the record to refute this finding. Additionally, reliance on an incident/investigation report in adjudicating discretionary relief-even in the absence of a criminal conviction-is permissible provided that the report is inherently reliable and its use is not fundamentally unfair. *See e.g., Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) ("[T]he admission into the record of ... information contained in the police reports is especially appropriate in cases involving discretionary relief . . . , where all relevant factors . . . should be considered to determine whether an [applicant] warrants a favorable exercise of discretion."). An applicant must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. Here, the Applicant has not offered new evidence on appeal to establish that the incident/investigation report was not inherently reliable or that its use was fundamentally unfair such that our reliance upon it would be impermissible. The Applicant has also not made an argument sufficient to show that we erred in considering the events leading to his arrest in our discretionary analysis.

To summarize, the Applicant was arrested for inflicting corporal injury to spouse or cohabitant — conduct of the type the U program was created to protect against. *See* section 101(a)(15)(U)(iii) of the Act (including, as qualifying criminal activity, “felonious assault”); 8 C.F.R. § 214.14(a)(9)(same); Interim Rule, New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007) (“In passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute 6 such crimes as domestic violence, sexual assault, . . . and other crimes while offering protection to victims of such crimes.’). While we acknowledge evidence of the Applicant’s positive and mitigating equities submitted below documenting his family ties, lengthy residence in the United States, educational accomplishments, stable employment, and payment of taxes, they are not sufficient to establish that his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the nature, recency and seriousness of his conduct, which occurred while he held U nonimmigrant status and *after* he applied to reside permanently as an LPR in the United States. Consequently, the Applicant has not demonstrated that he is eligible to adjust his status to that of an LPR under section 245(m) of the Act.

**ORDER:** The appeal is dismissed.