



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

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

In Re: 23381805

Date: DEC. 9, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of a 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 her “U-3” nonimmigrant status. The Director of the Vermont Service Center initially denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), for missing required documentation. The Applicant filed a motion to reopen and reconsider with the missing documentation and the Director reopened the case. The Director again denied the U adjustment application, concluding that the Applicant had not established that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted. On appeal, the Applicant submits evidence and a brief asserting she merits a favorable exercise of discretion. 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, we will dismiss the appeal.

**I. LAW**

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to an LPR if that individual demonstrates that he or she has been physically present in the United States for a continuous period of at least three years since admission as a U nonimmigrant, has not unreasonably refused to provide assistance in a criminal investigation or prosecution, and the individual’s 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; 8 C.F.R. § 245.24(f).

A favorable exercise of discretion to grant an applicant adjustment of status to that of an 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 adjustment of status determinations). However, where adverse factors are present, the applicant may submit evidence establishing mitigating equities. See 8 C.F.R. § 245.24(d)(11) (providing 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”).

In these proceedings, the burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

The Applicant, a native and citizen of Honduras, was granted U-3 nonimmigrant status from February 15, 2017, until February 14, 2021, based on her mother’s U-1 nonimmigrant status. She timely filed her U adjustment application on May 4, 2020.

In denying the U adjustment application, the Director acknowledged the favorable and mitigating equities present in the Applicant’s case, including her residence in the United States since December 2012; her family ties in the country, including her seven-year-old U.S. citizen daughter; her daughter’s need for ongoing medical care; and her fear for her and her daughter’s safety in Honduras. However, the Director noted that the Applicant entered the United States without inspection as an adult and therefore her length of residence was given limited weight. The Director concluded that the Applicant’s favorable and mitigating equities were outweighed by her adverse factors, including her arrest in [ ] 2021, while she was in U-3 nonimmigrant status and her U adjustment application was pending, for operating under the influence, unlicensed operation of a motor vehicle, and miscellaneous ordinance/bylaw violation. At the time of the decision, the Applicant’s charges were pending judicial resolution. The Director reviewed documents related to the arrest which reflect that the Applicant repeatedly crashed into a tractor parked across from the bar she was drinking at, she had glossy eyes, a strong odor of alcohol came from her vehicle, and there were open containers of alcohol in her vehicle. The Director noted that operating under the influence puts the well-being and safety of the individual and others, and the property of others, at risk, and therefore is a significant adverse factor. Furthermore, the Director stated that USCIS will generally not exercise discretion favorably when an applicant has pending charges due to the inability to fully assess the criminal proceedings, the severity of conduct, and whether it is in the national interest to grant adjustment of status. The Director determined that the behavior associated with the Applicant’s charges was a risk to the well-being and safety of others, an indication of a disregard for the laws of the United States, and not in the public interest. Therefore, the Director concluded that the Applicant had not submitted sufficient evidence to establish that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that she warrants a favorable exercise of discretion to adjust her status to that of an LPR.

On appeal, the Applicant asserts that her favorable and mitigating equities outweigh her adverse factors, and she therefore warrants a favorable exercise of discretion. The Applicant emphasizes the hardship that she and her family members would experience if her U adjustment application is denied. The Applicant references being repeatedly targeted and recruited by gang members while living in Honduras, and the general violence against women and lack of rights in Honduras. She states that a gang member in Honduras cut her face when she struggled against his attempt to force her to join him. At that point, the Applicant rarely left her house and fled to the United States to seek safety with her mother, who had arrived many years earlier. The Applicant details the hardship her daughter, who she is raising by herself, would experience if she remained in the United States or moved to Honduras.

The Applicant states that her daughter has a rare genetic disorder which causes her to have a low bone mass and other conditions, she has had 16 bone fractures and four operations, she has metal rods in her legs and uses a wheelchair, she attends physical therapy twice a week, she receives intravenous infusions twice a year, and she requires daily supervision. The Applicant states that she has custody of her daughter as her father has a drug problem and cannot provide for her. The Applicant also cares for her anemic mother. The Applicant fears for her safety and her daughter's safety if they return to Honduras based on her past experience and current country conditions. Furthermore, the Applicant is concerned for her daughter's well-being if she loses her as her caretaker in the United States or loses her specialized medical care if she relocates to Honduras. Lastly, the Applicant expresses remorse for her criminal activity and states that she has not had a drink since the date of her arrest. In support of her claims, the Applicant has submitted medical records for her daughter and information on issues of violence against women and lack of human rights in Honduras.

Upon *de novo* review of the record, the evidence and arguments submitted on appeal, while relevant, are not sufficient to overcome the discretionary denial of the Applicant's U adjustment application. We acknowledge the Applicant's favorable and mitigating equities include her residence in the United States since December 2012, her U.S. citizen daughter, hardship her daughter would experience due to her medical issues, and general safety concerns upon relocation to Honduras. However, her favorable and mitigating equities do not outweigh her adverse factors, which include her criminal history and lack of rehabilitation. In considering an applicant's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offenses. *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978). The record reflects that the Applicant was arrested in [ ] 2021, while she was in U-3 nonimmigrant status and her U adjustment application was pending, and she pled guilty in [ ] 2022 to operating under the influence of liquor pursuant to Massachusetts General Laws § 24(1)(a)(1). She was sentenced to 18 months of probation, which does not end until [ ] 29, 2023. Driving under the influence of alcohol is both a serious crime and a significant adverse factor relevant to our consideration of whether the Applicant warrants a favorable exercise of our discretion. *See Matter of Siniauskas*, 27 I&N Dec. 207, 207 (BIA 2018) (finding DUI a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *see also Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (A.G. 2019) (discussing the "reckless and dangerous nature of the crime of DUI"). The fact that the Applicant committed her alcohol-related crime while she maintained U-3 nonimmigrant status and while her U adjustment application was pending is an additional adverse factor to be considered. Furthermore, the underlying facts of her arrest involved dangerous and unsafe behavior, and she put the safety of the public at risk.

Moreover, an applicant for discretionary relief "who has a criminal record will ordinarily be required to present evidence of rehabilitation before relief is granted as a matter of discretion." *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991); *see also Matter of Marin*, 16 I&N Dec. at 588 (emphasizing that the recency of a criminal conviction is relevant to the question of whether rehabilitation has been established and that "those who have recently committed criminal acts will have a more difficult task in showing that discretionary relief should be exercised on their behalf"). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which she was required to comply with court-ordered mandates, but also after her successful completion of them. *See U.S. v. Knights*, 534 U.S. 112, 121 (2001) (recognizing that the state has a justified concern that an individual under probationary supervision is "more likely to engage in criminal conduct than an ordinary member of the community"). Further,

when an individual is on probation, she enjoys reduced liberty. *See, e.g., Doe v. Harris*, 772 F.3d 563, 571 (9th Cir. 2014) (noting that, although a less restrictive sanction than incarceration, probation allows the government to “impose reasonable conditions that deprive the offender of some freedoms enjoyed by law abiding citizens”) (internal quotations omitted); *U.S. v. King*, 736 F.3d 805, 808-09 (9th Cir. 2013) (“Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled.”) (internal quotations omitted). We acknowledge the Applicant’s statement that she has not had a drink since the date of her arrest. However, her period of probation does not end until [REDACTED] 2023. In light of the above, we do not find that the Applicant has established her rehabilitation by a preponderance of the evidence.

Under these circumstances, the Applicant has not demonstrated that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that she warrants a positive exercise of our discretion to adjust her status to that of an LPR under section 245(m) of the Act.

**ORDER:** The appeal is dismissed.