



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

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

In Re: 23396008

Date: DEC. 15, 2022

Appeal of Vermont Service Center Decision

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

The Applicant seeks to adjust their status to that of 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 their “U” nonimmigrant status.

The Director of the Vermont Service Center denied the Applicant’s Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), concluding that the Applicant did not warrant a favorable exercise of discretion. On appeal, the Applicant submits a brief and copies of unpublished decisions cited in their brief.

In these proceedings, it is the Applicant’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *See 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 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* 1 *USCIS Policy Manual* E.8(C)(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 should 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 Applicant, a citizen of Ecuador, was granted U nonimmigrant status in October 2014. The Applicant filed the U adjustment application in August 2018. The Director denied the application, determining that the Applicant had not demonstrated that their adjustment of status to that of an LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest due to the Applicant’s history of arrests.

### A. Positive and Mitigating Equities

The Applicant is 39 years old and has lived in the United States for approximately 21 years. The Applicant’s family ties in the United States include their long-term romantic partner, H-L-Z- and their two children.<sup>1,2</sup> The Applicant provided evidence of stable employment, previous ownership of a construction company, and evidence of payment of their taxes. They indicated in prior statements in the record that they are active in their community and attend church when they are able. They indicated that removing them from their children’s lives would affect their lives deeply and stated that they have opportunities in the United States that do not exist in Ecuador, and the children will have access to a good education, healthcare, and a secure environment.

Also, the Applicant discussed the emotional and financial hardship that their partner, H-L-Z-, and their children together would face if they were forced to leave the United States. They also submitted letters in support from members of the community who attested to the Applicant’s character, noting that they are the sole provider for the family, always on time for work and very trustworthy, and a good parent and friend.

We also note that the Applicant obtained their U nonimmigrant status as the victim of criminal activity in the United States and was helpful to law enforcement in the investigation of this criminal activity.

### B. Adverse Factors

The Applicant’s primary adverse factor is their criminal history. The record reflects that the Applicant unlawfully entered the United States in 2001 and has since been the subject of multiple arrests and citations. As discussed in the Director’s decision, the Applicant’s criminal history is comprised of incidents such as prohibited language and/or conduct, driving without a license, driving after revocation, uninsured vehicle, failure to appear, possession of invalid/altered/fictitious ID card and

---

<sup>1</sup> The Director’s decision notes that the Applicant is not married to their partner, as well as the fact that their two children’s birth certificates do not list the Applicant as the children’s parent. They indicated in their previous statements in the record that they were unable to complete the recognition of their parentage of the two children because their partner is still legally married to another individual. The Director acknowledged these facts and also afforded positive weight to the Applicant’s parental role, financial and emotional support for these children.

<sup>2</sup> We use initials to protect the identity of individuals.

Speeding. These incidents resulted in them being sentenced in part to jail terms of 30, 90, and 180 days, on separate occasions. They were also arrested for domestic assault in 2003, and again under similar charges in 2020.

The Director's decision discussed the 2003 arrest for domestic assault, noting that the Applicant was found guilty of disorderly conduct and sentenced to one year of probation and attendance in a domestic abuse program. In their prior statements in the record, the Applicant stated that their partner at the time was very jealous and thought that they were seeing other people. They stated that they arrived home one night, and their partner approached in an aggressive manner. The Applicant stated that they grabbed their partner's arms to stop them from causing any harm, and their partner's friend called the police. They indicated that their partner told the police that they had been cursing at them, and the Applicant completed probation and paid a fine.<sup>3</sup>

Further, the Director discussed the Applicant's 2020 arrest. As a result of this incident, they were arrested and charged with domestic assault-commits acts to cause fear of immediate bodily harm or death and disorderly conduct-offensive, abusive, boisterous, noisy/obscene. The Director noted that these charges were dismissed for lack of victim cooperation. The Applicant provided the arrest report from the incident which indicated that one of their partner's children called the police and stated that they were hitting their partner. When the police arrived on the scene, the arrest report indicated that two of the children fled the home, and when the police talked with the Applicant's partner, H-L-Z-, they indicated that the Applicant pulled their hair and punched the wall several times. H-L-Z- also told the officers that they tried to go to the kitchen to get a knife to protect themselves and the children from the Applicant. In response to the Director's RFE, the Applicant and H-L-Z- both characterize the incident as a "loud argument" and stated that the child who called the police became frightened and mistakenly called the police. H-L-Z- stated that they "did not cooperate with the police or prosecutor because this argument was taken out of proportion by [their] son, who at that time did not understand what was happening," and indicated that the incident "helped [them] realize [they] needed to communicate better."

#### 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 factors in this case. We acknowledge the Applicant's residence in the United States, family ties, history of employment, evidence of payment of taxes, expression of remorse, and financial and emotional hardship concerns. However, notwithstanding these factors, the Applicant has not demonstrated that they merit a favorable exercise of discretion to adjust their status to that of an LPR.

---

<sup>3</sup> The Director, in requests for evidence (RFE), asked the Applicant to submit an arrest report from the incident, which they attempted to obtain, but provided letters from the relevant authorities attesting to the nonexistence of the arrest report from their 2003 arrest.

On appeal, the Applicant initially argues that the Director's decision gave improper weight to the Applicant's unlawful entry and 2003 arrest, as this conduct was previously waived by the approval of their Form I-192, Application for Advance Permission to Enter as a Nonimmigrant (waiver application). We acknowledge that USCIS previously waived the Applicant's conduct in granting him U nonimmigrant status and afford positive weight to this decision. Nonetheless, a U adjustment application is a separate adjudication and USCIS is not bound by its prior determination on a waiver application.

In considering an Applicant's criminal record in the exercise of discretion, we consider multiple factors including the "nature, recency, and seriousness" of the crimes. *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978). While we acknowledge that the Applicant's 2020 arrest and criminal charges were ultimately dismissed, the conduct occurred recently, after the Applicant filed their U adjustment application. Further, the conduct described in the police report is concerning. While H-L-Z- argued in her statement in response to the Director's RFE that it was a "loud argument" and that their son misunderstood the situation when he called the police, H-L-Z- does not specifically state that the information they provided to the police was inaccurate. We note again that according to the arrest report, H-L-Z- told the officers that the Applicant pulled their hair, punched the wall, and that they were going to the kitchen to get a knife to protect themselves and their children from the Applicant.

In their brief, the Applicant submits unpublished decisions in support of their argument that the Director improperly relied on the arrest report for their 2020 arrest, however, even as cited in some of the unpublished decisions they provided, it is appropriate to consider evidence of criminal conduct that has not culminated in a final conviction when adjudicating an application for discretionary relief. *Matter of Thomas*, 21 I&N Dec. 20, 23-25 (BIA 1995). Review of police reports detailing the circumstances surrounding the commission of a crime and other evidence of criminal activity is also appropriate when considering an application for discretionary relief. *Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996). Finally, reliance on an arrest 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.").

The Applicant additionally disputes the weight which the Director gave to their positive mitigating factors but does not indicate that the Director failed to consider these factors in their entirety. Rather, they cite various non-precedent decisions and attempt to compare their case to others which were resolved favorably. In our review, we determine that the Director's decision accurately portrayed both the Applicant's positive and negative factors and provided sufficient explanation for their determination of the weight provided. As previously noted, it is the applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We conclude that the Applicant has not met this burden, and that the Director's decision provided a sufficient explanation of the Applicant's positive and negative equities.

### III. CONCLUSION

To summarize, due to the Applicant's criminal history, they have not established that it is in the public interest to adjust their status to that of an LPR. The Applicant's family ties, lengthy residence in the United States, employment history, payment of taxes, and emotional and financial concerns, while favorable, are not sufficient to establish that their continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the severity and recency of the conduct that led to their 2020 arrest. Consequently, the Applicant has not demonstrated that they are eligible to adjust their status to that of an LPR under section 245(m) of the Act.

**ORDER:** The appeal is dismissed.