U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23214709

Date: DEC. 19, 2022

Appeal of Vermont Service Center Decision

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

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m)(3), based on an approved Form 1-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant (U immigrant petition). The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), as a matter of discretion, concluding that there was insufficient evidence to show that the positive and mitigating equities outweigh the negative factors in the case. The matter is now before us on appeal. On appeal, the Applicant submits a brief and reasserts his eligibility.

We review 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

A qualifying family member who has an approved U immigrant petition may then request adjustment of status. 8 C.F.R. § 245.24(i)(1). The decision to approve or deny the U adjustment application is a discretionary determination that lies solely within the jurisdiction of the U.S. Citizenship and Immigration Services (USCIS). *Id*. at § 245.24(i)(2).

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 adjustment of status determinations).

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).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was the qualifying family member of an approved Form I-918A, Petition for Qualifying Family Member of U-1 Recipient, filed on his behalf in March 2013 and was granted U-3 non-immigrant status valid from October 1, 2014, until September 30, 2018. The Applicant timely filed the instant U adjustment application on September 26, 2018.

The Director denied the Applicant's U adjustment application, finding that that the mitigating factors did not outweigh the negative equities found in the record. The Director acknowledged the Applicant's positive factors but determined his arrests while his U-3 nonimmigrant status was pending and after receiving U-3 nonimmigrant status showed disregard for the laws of the United States, putting the public safety and property of others at risk, and that evidence was not sufficient to establish his adjustment of status was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. On appeal, the Applicant submits a brief from counsel and a sworn statement.

A. Favorable and Mitigating Equities

The record shows that the Applicant arrived in the United States at three years old more than 20 years ago and has not departed, that he graduated high school in 2015, and that he then obtained a training certificate as an auto service technician in 2019. The Applicant provided evidence of employment from 2015 through 2019 and payment of taxes, and that he has been involved in organized soccer. The record also indicates that the Applicant has his mother and five siblings now legal residents of the United States. In a statement submitted below the Applicant described wanting to make something of himself and contribute to his family, overcoming difficulties, dreaming of playing soccer, and getting a certificate as an auto technician. He asserted that he made errors but has grown, is a better person, and is productive in society. The Applicant conceded there are things he could have done differently but stated that he now looks forward and knows how his actions can affect his future. The Applicant added that the United States is the only home he knows, and his entire family is here.

The Director found the Applicant's education, job stability, community support, family ties, and length of residence in the United States were positive factors that weighed in his favor.

B. Adverse Factors

The Applicant's primary adverse factor is a criminal history where the record indicates that he was arrested on two occasions. In [redacted] 2014 the Applicant was charged with felony criminal mischief and then convicted in [redacted] 2014 of disorderly conduct, create a hazardous condition, a violation under NYPL § 240.20.7. He was given a conditional discharge for one year and ordered to pay $900 restitution. A police detective narrative of the incident indicates that police responded to a report of teenagers kicking cars, observed a damaged vehicle, located the group of teenagers, and charged two of them, including the Applicant, with criminal mischief. The report refers to a significant incident report (SIR) but that document does not appear to be in the record. In addressing the incident, the Applicant explained that he was with friends he described as immature and vandalizing cars, and that

he kicked a car to fit in. The Applicant maintained that he admitted his part to police, pled guilty to disorderly conduct, and afterward made efforts to remove himself from any drama and make better decisions about friends.

In [redacted] 2016 the Applicant was adjudicated as a youthful offender and convicted under NYPL § 215.50(3) of misdemeanor second degree criminal contempt. The conviction stemmed from events of [redacted] 2014, and the Applicant's subsequent arrest in [redacted] 2014, for violating a court order of protection. The record shows that in [redacted] 2013 the Applicant was issued a temporary order of protection to stay away from and not contact the petitioner, whom he identified as his ex-girlfriend. The record contains an [redacted] 2014 police domestic incident report listing the Applicant as the suspect in "Unwanted/Contact" and listed offenses as felony second-degree burglary and misdemeanor criminal contempt. A detective narrative indicates the officer responded to report of a past burglary and criminal contempt where complainants, the Applicant's ex-girlfriend and her mother, told the officer that there was a protection order against the Applicant, but they recounted three violations earlier that month. The ex-girlfriend told the officer that in one incident the Applicant approached her, knocked off her earphones and sunglasses, told her she would be in trouble if she called police, and then followed her and cursed her as she attempted to get away. She reported to the police officer that on two occasions the Applicant was hiding in her bedroom; the second time she called friends for help. The mother reported that she called police when she found out about the incidents and that she was fearful that the Applicant was able to enter the apartment with no signs of forced entry. A [redacted] 2014, detective narrative describes arresting the Applicant under a [redacted] 2014 warrant. A [redacted] 2016 Uniform Sentence and Commitment indicates the Applicant was sentenced to three years of probation, commencing in [redacted] 2016, with domestic violence conditions and a permanent order of protection to expire in [redacted] 2021, and that he was assessed surcharges and fees.

The Applicant described the incident as at a difficult time with his ex-girlfriend, conceded that they talked despite the order, and claimed that he now knows he should have been smarter. He explained that he got into an argument with her after a friend let him into her apartment, that her male friends showed up and got "physical" so the Applicant called his brothers, but the others had left before his brothers arrived. The Applicant stated that he then decided to cut off multiple friendships. He recalled that later that week police contacted him for a statement, he appeared before a judge, and he was detained a day before his mother paid bail. He stated that several months later he was arrested, appeared at criminal court over a couple of years, and was sentenced to three years of probation from [redacted] 2016 to [redacted] 2019. He contends that he regrets violating the court order but paid for what he did.

C. A Favorable Exercise of Discretion is Not Warranted

In denying the application, the Director noted deficiencies in submitted evidence, specifically that the police incident report of the Applicant's first arrest indicated there was further documentation regarding the incident, a SIR, but the Applicant did not submit this document. The Director further found that from evidence it could not be determined if the Applicant paid the $900 restitution or complied with the conditional discharge for one year as he was arrested within a year in an unrelated incident in [redacted] 2014.

Regarding the Applicant's second arrest, the Director observed that a protection order dated [redacted] 2013 was in effect until [redacted] 2013, but the detective's narrative indicated the complainant had in her

possession a protection order valid through [redacted] 2014. The Director concluded that it appeared the order had been extended but the Applicant did not provide any court documents or address why the order was extended, and that evidence further indicated that he was subject to a permanent order of protection effective in [redacted] 2016. The Director found this to be a negative factor and noted that according to the detective's narrative, the complainant stated that on several dates the Applicant contacted her in violation of the protection order. The Director further noted that the Applicant did not provide court documentation or explain the outcome of the burglary charge identified in the police incident report. The Director acknowledged the probation officer's letter stating that the Applicant's three years of probation was terminated in [redacted] 2019 but afforded it limited weight because the Applicant did not submit evidence regarding the permanent order of protection to expire [redacted] 2021, and he did not submit evidence that he paid surcharges and fees.

On appeal, the Applicant argues, through counsel, that the Director mischaracterized facts in finding that he did not merit a positive exercise of discretion based on two, non-criminal seven-year-old offenses. The Applicant maintains that disorderly conduct is a violation, not a crime, that the record was sealed because the case ended by conviction for a noncriminal offense,[1] and that the official record of disposition issued in [redacted] 2019 reflects all the court activity. The Applicant contends that although the Director referred to a detective's report estimating damage to a vehicle the report does not indicate who was responsible, is not a sworn statement, and is not based on firsthand knowledge. The Applicant asserts that the record shows that he kicked a car, that he was arrested, and that court accepted his disorderly conduct plea but did not incarcerate or place him on probation, and he argues that the offense is not serious when committed by a 17-year-old.

The Applicant concedes that he violated a court order in [redacted] 2014, but argues the disposition was not conviction of a crime because he was adjudicated as a youthful offender under NYPL § 720.20 where a criminal court determines justice would be served by relieving him from the onus of a criminal record. In support the Applicant cites *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000), which found that an adjudication of youthful offender status or juvenile delinquency is not a criminal conviction under immigration laws. The Applicant maintains that the court case which produced the order of protection was initiated by his ex-girlfriend's mother, laments his immaturity, expresses remorse, denies ever causing physical harm, and asserts he has moved on. He argues the Director's decision errs by categorizing the statements made by the ex-girlfriend and her mother to police as fact, but the statements were unsworn and unverified, and that he agrees with only portions of their statements. The Applicant further argues that the Director's decision faults him for failing to explain the police report showing burglary, but that he was not charged with burglary. He surmises that evidence shows his ex-girlfriend got an order of protection against him, that he violated the order, that he plead guilty, that the court adjudicated him as a youthful offender, and that in [redacted] 2019 he completed probation while the order of protection expired in 2021 without any violation. The Applicant submits a sworn statement on appeal that he did not violate the protection order that expired in [redacted] 2021.

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). The Applicant has not made such a showing.

[1] The Applicant cites NYPL § 160.55.

The Applicant argues that he was not convicted of crimes for events that occurred when he was 17 years old. However, USCIS considers all relevant factors in assessing an applicant's eligibility for adjustment of status as matter of discretion, including those acts committed as a juvenile. *See* 8 C.F.R. § 245.24(d)(11) (providing that "USCIS may take into account all factors ... in making its discretionary decision on the [U adjustment] application"). Moreover, the "decision to approve or deny a [U adjustment application] is a discretionary determination that lies solely within USCIS' [] jurisdiction." 8 C.F.R. § 245.24(f); *see also Castro-Saravia v. Ashcroft*, 122 Fed. Appx. 303, 304-05 (9th Cir. 2004) (concluding that *Matter of Devison* does not preclude consideration of juvenile delinquency when making a discretionary determination).

Although the Applicant contends that the Director's decision is in error, he does not address on appeal the deficiencies identified in the decision. The Applicant argues that his record regarding disorderly conduct is sealed because the case ended, and the disposition reflects all the court activity. We acknowledge that the record is sealed, however, NYPL section 160.50 authorizes the Applicant to access any available records behind his arrest. The Applicant has not submitted the records or claimed that he attempted to procure them, nor has he directly addressed the Director's concerns about the Applicant's compliance with court findings and the SIR not being provided.

The Applicant acknowledges that he violated the protection order and indicates on appeal that he only agrees with part of the information in the police report provided by his ex-girlfriend and her mother, but he does not specify with what he disagrees, nor does he deny entering his ex-girlfriend's home and that he was hiding in the bedroom. He claims that he did not physically harm his ex-girlfriend but does not deny that he threatened her or knocked off her glasses as she reported to police.

Reliance on an incident report in adjudicating discretionary relief, even without 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 claims that the Director erred by considering statements to police from his ex-girlfriend and her mother as fact, but he has not offered evidence to establish that the police report was not reliable or that its use was fundamentally unfair such that reliance upon it would be impermissible. The Applicant has also not made an argument sufficient to show error in considering the events leading to his arrest in a discretionary analysis. On appeal the Applicant concedes the events leading to his arrests and contends generally that the Director's decision was in error, but he does not specifically address deficiencies identified by the Director nor produce additional evidence, including court documents or affidavits from other individuals, to offer more detail or mitigating circumstances involving the incidents. The Applicant also did not provide evidence that the protection order did indeed expire in 2021 without further incident.

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. We have considered the favorable and mitigating equities in this case and acknowledge the Applicant's length of residence in the United States, family ties, education, 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.

ORDER: The appeal is dismissed.