



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

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

In Re: 18930891

Date: FEB. 1, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application to Adjust 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 derivative “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits additional evidence and reasserts 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, 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 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 Applicant is a 28-year-old native and citizen of Honduras. His mother filed a Form 1-918 Supplement A, Petition for Qualifying Member of U-1 Nonimmigrant (U derivative petition), on his behalf, which USCIS approved, according him derivative U-3 nonimmigrant status from November 2010 to March 2014. The Applicant was in Honduras at the time his U petition was approved, and he subsequently obtained a U visa through consular processing with the U.S. Department of State (DOS). The Applicant entered the United States in March 2014, and U.S. Customs and Border Protection admitted him in U status until May 2014. The Applicant filed a Form I-539, Application to Extend/Change Nonimmigrant Status, in March 2014. The Director approved the application, retroactively extending the Applicant's U nonimmigrant status from March 2014 to March 2018. The Applicant timely filed the instant U adjustment application in March 2018.

The Director issued requests for evidence (RFE) in March and September 2019, seeking a copy of his Honduran passport, a Form I-693, Report of Medical Examination and Vaccination Record (medical examination), documentation regarding his arrests in [ ] 2012, [ ] 2014, [ ] 2018, [ ] 2018, [ ] 2018, [ ] 2019, and [ ] 2019, and additional evidence supporting a favorable exercise of discretion. In response, the Applicant submitted, among other things, arrest reports and court disposition records regarding his [ ] 2018 arrest for unauthorized use of a motor vehicle, [ ] 2019 arrest for driving on a suspended/revoked license, and [ ] 2019 arrest for a probation violation, a psychological evaluation for his mother, financial documents, a letter regarding his substance abuse treatment, letters of support from family and friends, and country condition reports for Honduras. The Director denied the Applicant's U adjustment application, concluding that the adverse factors, particularly his drug use and criminal convictions after he was granted U nonimmigrant status and the lack of evidence of his sobriety, outweighed the positive and mitigating equities in his case such that a favorable exercise of discretion was not warranted.

### A. Favorable and Mitigating Equities

The Applicant has lived in the United States for more than 16 years. The Applicant's family ties in the United States include his U.S. citizen brother and daughter, LPR mother and sister, and partner, who is applying for LPR status. He provided evidence of current sobriety and substance abuse treatment. He also provided evidence of stable employment as a forklift operator and payment of taxes since 2015. Additionally, the Applicant stated that he fears returning to his home country of Honduras. He conceded that his father lives in Honduras, but that he does not trust him because he was abusive and controlling with his mother. He also stated that he fears losing not only his mother, siblings, partner and newborn daughter,<sup>1</sup> but also the opportunity to bring his son from a previous relationship from Honduras to the United States. Lastly, he stressed that he wants his children to grow up in a safe place and have educational and employment opportunities that he never had as a child in Honduras.

On appeal, the Applicant submits additional evidence including an updated personal statement, a psychological evaluation, a statement from and medical records for his partner, letters of support from family and friends, a letter from his employer, paystubs and federal income tax returns for 2019 and 2020, a copy of his drug screening tests, court disposition records for his arrests, articles on substance

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<sup>1</sup> The Applicant submitted evidence on appeal that his daughter was born in [ ] 2021.

abuse, hyperactivity disorder, and posttraumatic stress disorder, country condition reports for Honduras, articles on migration and the criminal justice system in the United States, family photographs, and a copy of a decision from the Board of Immigration Appeals (Board).

## B. Adverse Factors

The Applicant's primary adverse factor is his criminal history. The record reflects that the Applicant was cited in [ ] 2012 in [ ] Oregon, for Unlawful Possession of Marijuana in violation of section 475.864 of the Oregon Revised Statutes (Or. Rev. Stat.). A narrative report from the [ ] Oregon Police Department indicated that an officer initiated a pedestrian check on the Applicant. The officer noted that the Applicant was intoxicated and his clothing was torn and disheveled. Upon questioning, the Applicant admitted to drinking and smoking marijuana. He was unable to tell the officer where he lived or contact a ride to take him home due to his level of intoxication. The Applicant consented to a search of his person. Prior to being searched, however, the Applicant handed the officer a small bag of marijuana. The officer issued the Applicant a citation for possession of a controlled substance (less than one ounce) and transported him to a local detox facility. He was found guilty of unlawful possession of marijuana. His driving privileges were suspended for six months and he was ordered to pay a \$650.00 fine. The Applicant claims that he paid the fine, but did not submit any evidence of payment.

The Applicant was arrested in [ ] 2014 in [ ] for Assault IV and Disorderly Conduct in violation of sections 163.160 and 166.025 of the Or. Rev. Stat., respectively. The narrative report from the [ ] Sheriff's Office indicates that officers responded to the report of two males fighting inside a residence at an apartment complex. Upon their arrival, the officers located the Applicant in the apartment complex parking lot. He told one of the officers that he had come to the apartment complex to retrieve his friend, G-L-'s <sup>2</sup> driver license from D-Z-'s apartment. He stated that D-Z- came out of his apartment, pushed him, and hit him "like 50 times." The Applicant complained of nose pain, but the officer did not observe any marks on his nose. While speaking with the Applicant, the officer noticed that he appeared to be intoxicated. The Applicant admitted that he had consumed "7-8 Corona beers." The officer spoke to D-Z-, who stated that he and the Applicant were second cousins who had emigrated from Honduras a few years ago. He stated that he was in his apartment when he heard the Applicant yelling and cursing in Spanish in the parking lot outside of his apartment. D-Z- claimed that the Applicant was upset because he was dating the Applicant's former girlfriend. He explained that he exited his apartment and confronted the Applicant in the parking lot. At that point, the Applicant pushed him and started punching him. He further explained that he was able to grab the Applicant and throw him to the ground. He held onto the Applicant by his wrist and shoulder. He claimed that the Applicant was able to punch him a couple of times while he was holding his wrist and shoulder. Eventually, the Applicant calmed down and D-Z- returned to his apartment. The officer observed that D-Z- had several injuries including scratches on his face and neck, and a cut on his lower lip. D-Z- also complained of a sore chest from being punched. G-L- confirmed the Applicant's story, but was intoxicated and had difficulty recalling the details of the incident. The officer placed the Applicant under arrest for assault and disorderly conduct. He was transported to the [ ] Sheriff's Office for booking. In his statement, the Applicant explained that he had recently returned from Honduras and that while he was away, his former girlfriend began dating D-Z-. He stated that as soon as D-Z- saw him, he started fighting with him. He claimed that he

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<sup>2</sup> Initials are used to protect the privacy of the individual.

assumed it was a family argument and did not take it seriously. He fought with D-Z- and rolled around on the grass until the police showed up. According to the Applicant, he was detained for approximately seven hours and released with a future court date. When he went to court, he was told that there was no longer a court date because the charges had been dropped. The Applicant submitted a letter from the [REDACTED] District Attorney's Office stating that, "the District Attorney's Office declined to file charges against [the Applicant] arising from a [REDACTED] 2014 arrest for the crime of Assault IV involving Injury and Disorderly Conduct in the second degree (reckless risk), . . . . Because no criminal charges were filed, no court record or file exists."

The Applicant was arrested in [REDACTED] 2018 in [REDACTED] for Unauthorized Use of a Motor Vehicle and Criminal Mischief in violation of sections 164.135 and 164.365 of the Or. Rev. Stat. The narrative report from the [REDACTED] Oregon Police Department indicated that an officer observed the Applicant driving a vehicle that was spray painted black. The officer initiated a stop and approached the Applicant, the vehicle's driver. The Applicant told the officer that the vehicle belonged to his brother. While the Applicant was searching for vehicle documents, the officer observed a long magazine for a handgun sitting in the driver's dash area. The officer called for a second patrol car to assist in a search of the vehicle. When the second patrol car arrived, the Applicant was instructed to open the driver's side door and exit the vehicle. The officer observed a BB gun in the driver's door pocket. He removed the BB gun and magazine from the car and called police dispatch with the car's vehicle identification number (VIN). Dispatch confirmed that the car was reported stolen. The Applicant denied the car was stolen. Instead, he told the officer that the car belonged to his brother. When asked why he spray painted the car and changed the license plate if it was not stolen, the Applicant denied that he had spray painted the car. The officer then contacted the Applicant's brother. He stated that his brother was homeless and had not lived at his residence for several years. He believed the Applicant was using drugs, and had entered his residence and taken the key to the car. He stated that he had purchased a car for the Applicant, who made payments to him for the car. The Applicant later lost his job and stopped making payments on the car. The Applicant's brother claimed that he repossessed the car after the Applicant crashed it. He stated that the Applicant's car was in the body shop and the car the Applicant had taken was a rental car. He told the officer that the Applicant did not have his permission to take the rental car, which he had reported stolen the month before. The officer determined that the Applicant had stolen the rental car and placed him under arrest. The officer noted in his report that the Applicant was irrational and combative after he was arrested. He repeatedly stated that his brother knew he had the car and that he had evidence on his phone to prove it. However, he refused to give the officer his passcode so that he could access that evidence. The Applicant was transported to the [REDACTED] Jail where he was booked for unauthorized use of a motor vehicle and criminal mischief.<sup>3</sup> In his statement, the Applicant explained that he crashed his car in July 2018. He states that the car was under his brother's name because his credit was not good enough to buy it. One day, the car was towed so he called his brother to get the information to get the car back. When his brother did not return his call, the Applicant went to his brother's house. He saw the rental car that his brother had while his car was in the repair shop. He claimed that his methamphetamine addiction made him angry that his brother had not returned his call or told him about the rental car. He grabbed the keys and took the rental car so that he could get around town. He admitted that his brother asked him to return the car, which he refused to do because he was angry. The Applicant was charged with unauthorized use of a vehicle and criminal mischief in the first degree.

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<sup>3</sup> The Applicant's passenger was also arrested and charged with unauthorized use of a motor vehicle and possession of a controlled substance, methamphetamine.

He pled guilty to unauthorized use of a vehicle. The charge for criminal mischief in the first degree was dismissed. The Applicant's driver license was revoked for one year. He was sentenced to 30 days in jail, placed on 18 months of supervised probation, ordered to undergo substance abuse treatment, and pay \$850.00 in fines and court costs. The Applicant did not submit evidence that he complied with the terms of his sentence.

The Applicant was arrested again in [ ] 2018 in [ ] for theft by receiving, distribution of a controlled substance, methamphetamine, possession of a stolen vehicle, possession of controlled substance, methamphetamine, and unauthorized use of motor vehicle, in violation of sections 164.095, 475.890, 819.300, 475.894(2)(b) and 164.365 of the Or. Rev. Stat., respectively. The narrative portion of the offense/incident report from the [ ] Police Department indicates that an officer observed a male with a female passenger driving a black Dodge [ ] station wagon. The officer eventually stopped the vehicle and ordered the Applicant and his female passenger out of the vehicle. The Applicant told the officer that he had purchased the vehicle from A-, from [ ] Oregon, but did not know her last name. He claimed that he purchased the vehicle for \$5,000 and that he had a bill of sale inside the vehicle. However, the officer was unable to locate the bill of sale inside the vehicle. The officer conducted a search of the Applicant. He removed numerous small Ziploc baggies from his right pocket containing 8.6 grams of a white crystal-like substance. The Applicant told the officer "it's meth. I'm addicted," but denied selling it. The Applicant was arrested and transported to [ ] Police Department for booking.<sup>4</sup> In his statement, the Applicant explained that he was driving a car that he had recently purchased. He paid 50% of the purchase price in cash and was going to pay the remaining 50% later. He claimed that the police stopped him because they believed the car was stolen. He further claimed that he tried to explain to the police that the car was not stolen, but they searched him and the car anyway. During their search, the police found methamphetamine on him. He was arrested for unauthorized use of a vehicle and drug-related charges. According to the Applicant, he was later able to prove that the car was not stolen. He claimed that the judge told him that she would dismiss the drug charges if he was serious about getting clean. However, he struggled with his addiction and was never able to convince himself to attend drug rehabilitation. The Applicant was charged with one felony count each of unauthorized use of a vehicle, possession of a stolen vehicle, and unlawful possession of methamphetamine. He submitted a *General Judgment of Dismissal* from the Circuit Court in the State of Washington for the [ ] stating that, "this case [wa]s dismissed as to all charges" in [ ] 2018.

The Applicant was arrested in [ ] 2018 in [ ] for menacing-threats no weapon and a probation violation in violation of section 163.190 of the Or. Rev. Stat. In the narrative report from the [ ] Police Department, an officer explained that he responded to a call of a male with a gun searching for a female. When he arrived, the Applicant was already in handcuffs and the firearm, which was determined to be a BB gun, had been secured. A female victim told the officer that she was inside her residence when she heard someone yelling. She stepped outside to investigate the noise, and encountered the Applicant. When the Applicant saw her, he pointed a gun at her. He told her to "move or he would kill her" and yelled for "Jesus Christ to help him." The female victim ran back into her apartment and told her daughter to call the police because she could not speak English. She stated that he did not know the Applicant and that he was "some crazy person." The officer noted that the Applicant's speech pattern was "disorganized" and "nonsensical." He told the officer that,

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<sup>4</sup> The Applicant's female passenger was also arrested and charged with possession of a controlled substance, methamphetamine and carrying a concealed weapon.

“[he was] just getting his girl, God told [him] to come and get it,” “[he] was standing in the corner and [he] did not do anything,” “it wasn’t a gun, it was a bb gun,” and “[he did] not treat [*sic*] anyone with a gun. [He] wasn’t yelling in the front, [he] was just standing there and [he] stand [*sic*] there and [he] told the lady, hey can you please bring my girlfriend? They told [him] no, they call[ed] the cops.” The Applicant was arrested for menacing and transported to the [ ] jail. Once at the jail, the Applicant told an officer that he was at the residence searching for girlfriend. He claimed that they had lived in the residence for 23 days. He also claimed that he smoked cigarettes every day and had used methamphetamine 60 days ago. The officer asked the Applicant if he heard voices to which he replied “no.” The Applicant stated that he found the BB gun inside the residence, but denied ever stepping on the property or pointing the BB gun at the female victim. In his statement, the Applicant explained that he remembers that he was looking for his girlfriend. He stated that he went to her friend’s house to see if she was there. He claimed that he did not go into the house, but yelled into the windows. He stated that someone called the police, who later arrested him for menacing and failing to check in with his probation officer. The Applicant submitted a letter from the [ ] District Attorney’s Office stating that, “the District Attorney’s Office declined to file charges against [the Applicant] arising from a[n] [ ] 2018 arrest for the crime of Menacing, . . . Because no criminal charges were filed, no court record or file exists.”

The Applicant was arrested in [ ] 2018 in [ ] for criminal trespass in violation of section 164.245 of the Or. Rev. Stat. The narrative report from the [ ] Police Department stated that an officer reported to the call of an unwanted person at a residence. The caller told police dispatch that the Applicant was previously trespassed from the residence, but had returned looking for his girlfriend. Upon arriving on scene, the officers spoke with the Applicant and the caller. The Applicant told the officers that he had lived at the location with his girlfriend for about one month. He claimed that he went to a job interview and later returned to the location to shower. He further claimed that he left for cigarettes and was locked out when he returned. The Applicant was unable to provide any evidence that he lived at the address or a key to the house. Multiple officers tried unsuccessfully to convince the Applicant to leave the property. One of the officers later spoke with the landlord who requested the Applicant be “trespassed.” The Applicant was informed that he would be arrested if he stayed at the property or if he returned. Despite this, the Applicant refused to leave, stating that “this was his home” and that “he was going to stay.” After an hour of imploring the Applicant to leave, officers decided to arrest the Applicant for criminal trespass. He was transported to the [ ] jail for booking. In his statement, the Applicant explained that he and his girlfriend had recently moved into a friend’s house. He claimed that his name was not on the lease. One evening, he and his girlfriend got into an argument, and she told him to leave. He refused and someone called the police. When the police arrived, he was unable to prove that he lived there because his name was not on the lease. He acknowledged that the police were polite and told him that he would have to leave if he could not prove he lived in the residence. The Applicant admitted that he was stubborn and refused to leave which led to his arrest for criminal trespass. He provided a letter from the [ ] District Attorney’s Office stating that the office “declined to file criminal charges against [the Applicant] arising from a [ ] 2018 arrest for the crime of Criminal Trespass in the Second Degree . . . Because no criminal charges were filed, no court record or file exists.”

The Applicant was arrested in [ ] 2019 in [ ] for a probation violation. The narrative report from the [ ] Police Department indicated that the Applicant’s probation officer

requested assistance in taking the Applicant into custody on a detainer. An officer reported to the probation officer's office where he was meeting with the Applicant. The probation officer informed the Applicant that he was going to be detained. The Applicant was placed into handcuffs and transported to the [ ] Jail for booking. The Applicant explained that he called his probation officer a few days prior to report his drug relapse. When he did not hear from his probation officer, the Applicant contacted a recovery center in [ ] Oregon. An employee from the recovery center contacted the Applicant's probation officer. The probation officer informed the Applicant that he was going to be arrested for using drugs again. The Applicant was later arrested and released a few days later.

Finally, the Applicant was arrested in [ ] 2019 in [ ] for driving while revoked in violation of section 811.182(4) of the Or. Rev. Stat. The narrative report from the [ ] Sheriff's Office indicated that an officer observed the Applicant's vehicle slowly rolling through an intersection in [ ] Oregon. The officer turned on his overhead lights and initiated a traffic stop. The officer asked the Applicant for his driver license to which the Applicant replied, "I'm suspended man." He also told the officer he was unsure if the vehicle had insurance. He later admitted that he knew that he was not supposed to drive, but needed to do so for his job. The Applicant was subsequently arrested for driving while suspended and transported to the [ ] Jail for booking. In his statement, the Applicant confirmed that he was arrested because he was driving on a suspended driver license. He emphasized however, that he was not on drugs when he was arrested. The Applicant was charged with driving while suspended. He was found guilty and sentenced to 10 days in jail. He was also ordered to pay a \$190.00 fine. The Applicant did not submit evidence that he paid the fine.

The Applicant expressed remorse for his criminal history. He stated that he "know[s] that [he has] made a lot of mistakes, and [he] take[s] full responsibility for his actions." He acknowledged that what he did was wrong and he wished that he could change it. Regarding his drug use, the Applicant stated that it is a decision that that he will regret his whole life. He further stated that "his head was not thinking right" and that he was depressed at the time so he made the decision to do drugs. He asks for an opportunity to remain in the United States so "[he] can continue working and giving back and most importantly, to continue with [his] recovery." His partner echoed similar sentiments, noting that she was aware of the Applicant's past, but that he had shown her that he had moved past those issues. She stated that the Applicant's sole focus now is on being a supportive spouse and positive example for their newborn daughter.

#### 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 residence in the United States, family ties, completion of court-ordered rehabilitation and maintenance of sobriety, history of employment, and payment of taxes in 2015, 2019 and 2020. We

further acknowledge the hardship that the Applicant's family members, including his partner, daughter, mother, and siblings, would experience if the Applicant was not able to remain in the United States. 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 Applicant's adverse factors outweighed the positive and mitigating equities in his case. Specifically, she noted that the Applicant was arrested on multiple occasions for methamphetamine and convicted of a felony offense after he was granted U-3 nonimmigrant status. She also noted that the Applicant's five months of sobriety at the time of his RFE response, while admirable, was an insufficient amount of time to establish his rehabilitation from drugs.

On appeal, the Applicant contends that we erred by giving significant weight to certain offenses for which he was arrested but not charged. He argues that his criminal history does not make him inadmissible,<sup>5</sup> and the Director's reliance on uncorroborated and non-probative arrest reports is contrary to Board precedent and other caselaw. He further argues that we should consider that his childhood trauma and drug use contributed to his criminal activity, and that he is now rehabilitated from drugs and has expressed serious remorse for his past actions. Finally, the Applicant asserts that he and his family would suffer "exceptional and extremely unusual hardship" if they returned to Honduras.

Upon a careful review of the entire record, including the additional evidence submitted on appeal, we do not find the Applicant has met his burden of establishing that he warrants a favorable exercise of discretion. In considering an applicant's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offense(s). *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978). Additionally, USCIS generally does not exercise discretion favorably in cases where the applicant "has committed or been convicted of . . . multiple drug-related crimes." 8 C.F.R. § 245.24(d)(11). Here, the record indicates that the Applicant has been arrested a total of six times resulting in convictions or violations for possession of marijuana, unauthorized use of a motor vehicle, and driving while suspended/revoked—offenses which reflect a disregard for the laws of United States and posed a significant risk to public safety. More critically, the vast majority of the Applicant's arrests and convictions occurred while he held U nonimmigrant status and some after he submitted the instant U adjustment application seeking to reside in the United States permanently as an LPR. Finally, while we acknowledge that the [REDACTED] District Attorney's Office "declined to file charges" for assault, menacing, unauthorized use of a vehicle, possession of a stolen vehicle, and unlawful possession of methamphetamine against the Applicant, it did not vindicate or exonerate the Applicant from wrongdoing. We consider the circumstances of these arrests as described in the arrest reports and the Applicant's own statements to be an adverse factor in our discretionary determination. *See Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) ("[T]he admission into the record of . . .

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<sup>5</sup> The Applicant contends that "his arrests, felony conviction and prior drug use, the three adverse factors USCIS relied on to deny [his] adjustment of status, do not make him inadmissible." Specifically, he argues that he is not inadmissible because he is not a current drug abuser or addict and was not convicted of a crime involving moral turpitude or two or more offenses for which the total sentence of jail time is five years or more as required under sections 212(a)(1)(A)(iv), 212(a)(2)(A)(i)(I), 212(a)(2)(B) of the Act. We note however that the Applicant's inadmissibility is not determinative in this case, as, the regulation at 8 C.F.R. § 245.24(d)(11) provides that, USCIS "may take into account all factors, including acts that would otherwise render [him] inadmissible, in making a discretionary decision on the application."



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.”); *see also Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing to *Grijalva* and *Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995), in finding that consideration of police records and arrests was permissible in making a discretionary determination). Most relevantly, the arrest reports document, and the Applicant admits, his repeated use of or addiction to marijuana or methamphetamine.

Furthermore, the record does not establish that the Applicant has been rehabilitated. *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991 ); *Matter of Marin*, 16 I&N Dec. at 588 (stating that 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.”); *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.”). As we stated above, the Applicant was charged with violating his probation for failing to attend his scheduled appointments with his probation officer on two occasions, including once because he was still using methamphetamine. We have considered and do not seek to diminish the Applicant efforts at sobriety and reform; however, at the time of this appeal, the Applicant remained under court-ordered supervision. He submitted a letter from the State of Washington Department of Corrections stating that, as of September 2021, “[the Applicant] [wa]s currently being supervised with the Washington State Department of Corrections” and “. . . [wa]s court-ordered to obtain a chemical dependency treatment evaluation and ha[d] contacted State certified treatment facility and begun the process as directed.” However, the record does not include evidence of his successful completion of his supervision. Based on these facts, the Applicant has not submitted sufficient evidence to establish his rehabilitation.

To summarize, the Applicant has six arrests resulting in two convictions and one violation for possession of marijuana, unauthorized use of a motor vehicle, and driving while suspended/revoked—offenses which occurred *after* he was granted U nonimmigrant status and revealed the Applicant’s repeated disregard for public safety and the laws of the United States. While we acknowledge the aforementioned positive and mitigating equities in the Applicant’s case, 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 of his arrest history and criminal convictions, which all occurred while he held U nonimmigrant status. 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.