



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

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

In Re: 19977389

Date: FEB. 1, 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 derivative “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 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 April 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 January 2016, USCIS granted the Applicant “U-3” nonimmigrant status from January 2016 until September 2019. The Applicant timely filed the instant U adjustment application in September 2019.

A review of the Applicant’s record revealed that he had been arrested in [] 2018 for possession of a stolen vehicle. As a result, the Director issued a request for evidence (RFE) for 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, among other things, copies of an arrest report from the [] Police Department [] and court documents from the [] Township Justice Court and [] District Court. The Director acknowledged this evidence, but found it insufficient because it did not include a final disposition for his [] 2018 arrest. The Director issued a second RFE requesting a final disposition for the arrest. In response to the second RFE, the Applicant did not submit a final disposition for his arrest. Instead, he submitted a letter from his criminal defense attorney and a Case Information printout indicating that a jury trial was scheduled in the Eighth Judicial District Court for [] 2021. 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 his failure to submit a credible explanation for his arrest—which occurred while he was in U nonimmigrant status—and a final disposition regarding said arrest, as requested, 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 21 years, since he was one year old. The Applicant’s family ties in the United States include his mother, stepfather, siblings,¹ and son who is a U.S. citizen. He submitted a personal statement in which he stated that he had a difficult upbringing due to his father’s abuse towards him and his mother. Despite this difficult upbringing, the Applicant asserts that he is working hard to be a good person and establish a good life for his son. He submitted evidence that he has attended adult education classes and tries to help his community by volunteering as a tour guide at [] teaching high school students about animals, science, and preservation of resources. In statements from two of the Applicant’s friends, he is described as loving and attentive father and a selfless friend. Additionally, the Applicant explained that if he had to return to Mexico, his mental health would deteriorate and his family would be deprived of a relationship with him.

On appeal, the Applicant submits a letter from the Applicant’s health practitioner stating that she has treated him for major depression and anxiety since November 2019; a copy of the indictment from the

¹ The immigration status of the Applicant’s mother, stepfather, and siblings is not clear from the record.

District Court in [REDACTED] Nevada, charging the Applicant with attempted possession of a stolen vehicle in [REDACTED] 2019; a copy of the guilty plea agreement from the District Court in [REDACTED] indicating that the Applicant pled guilty to attempted possession of a stolen vehicle in [REDACTED] 2021; an updated personal statement repeating his desire to remain in the United States in order to pursue the “American dream”; and letters of support from his mother and partner stating that the Applicant is an involved father and loving partner and son.

B. Adverse Factors

The Applicant’s primary adverse factor is his criminal history. The record reflects that, in [REDACTED] 2018, the Applicant was arrested in [REDACTED] for possession of a stolen vehicle in violation of section 205.273 of the Nevada Revised Statutes (Nev. Rev. Stat.). The Declaration of Arrest from the [REDACTED] states that several officers responded to a report of a stolen vehicle. Upon arrival, the officers observed the stolen vehicle, a green Acura in a lot parked next to a black Acura. The Applicant and two other individuals were standing next to the vehicles. The Applicant told an officer that he had driven the green car to its current location. He explained that he was at an unknown person’s house when he received a phone call from a friend requesting assistance changing a tire. He claimed that he asked a friend, whose name he did not know, if he could borrow her car. He also claimed that he did not know that the car was stolen. The officer then spoke to the Applicant’s friend. He admitted that he drove the black Acura to the gas station. He told the officer that he never called the Applicant to ask for assistance changing a tire. Rather, he stated that he and the Applicant were hanging out together in an apartment and that they later left in two separate vehicles. Because the Applicant was in possession of a stolen vehicle and was unable to explain as to how and where he got the car, he was arrested and transported to the [REDACTED] Detention Center for booking. In his statement, the Applicant explained that he received a phone call from a friend who asked him to help him change a tire on his car. He stated that he did not have a car so he asked to borrow a friend’s car. He claimed that he did not “quite know” the name of his friend or that the car was stolen. The Applicant was charged in [REDACTED] 2018 with “willfully, unlawfully, and feloniously possess[ing] a stolen vehicle wrongfully taken from [the victim] to wit: a 1995 Acura Integra . . . , which [the Applicant] knew, or had reason to believe, had been stolen.” The Applicant agreed to plead guilty to Attempt Possession of a Stolen Vehicle in [REDACTED] 2021. It is not clear from the record what sentence was imposed as a result of the guilty plea agreement.²

The Applicant briefly addressed his arrest in a statement submitted before the Director. He emphasized that he had only been in trouble once and has not been charged with anything else before or since that time. He stated that his court case was still pending and that he hoped to prove his innocence. In a statement submitted on appeal, the Applicant concedes that he would have things differently had he known he would get in trouble with the law and have a criminal record for the rest of his life. He states that “[he] would not have taken those keys for a car that [he] didn’t know was stolen.” He claims that “sometimes life puts us in horrible situations to teach us valuable lessons,” and that he has learned that not everyone is his friend or his family.

² Specifically, the guilty plea agreement references possible punishments depending on the treatment of the offense as a gross misdemeanor or a felony, but leaves the final decision to the sentencing judge.

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 pursuits, and volunteer activities. We further acknowledge the Applicant's exposure to his mother's physical abuse, and its effect on his mental health, and his efforts to rehabilitate from that trauma to become a better father, partner, and son. 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, that there was no factor that rendered him statutorily ineligible for adjustment of status under section 245(m) of the Act. He notes that the denial hinged solely on his [] 2018 arrest, which has now been closed as a gross misdemeanor. He further notes the additional evidence he submitted on appeal, which he claims, "adds to the strong weight of evidence of family ties and lengthy period of residence in the United States that are already positive factors in his favor."

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). Here, the Applicant's [] 2018 arrest for possession of a stolen vehicle occurred recently, while he was in U nonimmigrant status. His guilty plea to and conviction for attempt possession of a stolen vehicle occurred in [] 2021, well after he filed the instant U adjustment application seeking to reside in this country permanently as an LPR. Additionally, although the Applicant expressed vague remorse for his criminal history, beyond letters of support from family and friends and evidence of sporadic employment and attendance at adult education classes, the record contains scant evidence of his rehabilitation. See *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991) (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"). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which he was required to comply with court-ordered mandates, but also after his 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"); *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). In this case, the Applicant has not provided evidence of the sentence imposed or punishment he received as a result of his guilty plea in [] 2021. As we noted above, the plea agreement indicates that the State would not oppose gross misdemeanor treatment and probation if the Applicant had no other felony or gross misdemeanor convictions, but that, "whether [he] receive[s] probation [wa]s in

the discretion of the sentencing judge.”³ Absent evidence of the sentence imposed in the Applicant’s case, and his completion of any required conditions, we cannot conclude that he has submitted sufficient evidence to establish his rehabilitation.

To summarize, the Applicant was arrested for possession of a stolen vehicle—an offense which involved dishonest behavior as well as a disregard for the personal property of others and the laws of the United States. While we acknowledge evidence of the Applicant’s positive and mitigating equities submitted below and supplemented on appeal documenting his family ties, lengthy residence in the United States, educational pursuits, and volunteer activities, 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 arrest and criminal conviction, which 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.

³ We acknowledge that the Applicant’s counsel asserts that the Applicant’s criminal case has been closed as a gross misdemeanor. However, the assertions of counsel are not evidence and must be supported by independent documentation. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (“We note statements or assertions by counsel are not evidence”).