



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

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

In Re: 19978489

Date: FEB. 1, 2022

Appeal of Vermont 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 Vermont 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 Applicant filed a motion to reopen and reconsider, which the Director subsequently granted but determined that the Applicant nonetheless had not established his eligibility. The matter is now before us on appeal. On appeal, the Applicant submits previously submitted 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, 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”).

An adjudication of youthful offender status or juvenile delinquency is not a criminal conviction under the immigration laws. *Matter of Devison-Charles*, 22 I&N Dec. 1362, 1373 (BIA 2000). However, all relevant factors are considered in assessing an applicant’s eligibility for adjustment of status as matter of discretion. 8 C.F.R § 245.24(d)(11). Juvenile offenses are factors relevant to the determination of whether a favorable exercise of discretion is warranted. *See 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). *See generally Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996) (including, in adverse factors relevant to discretionary relief, “the presence of other evidence indicative of an [individual’s] bad character or undesirability as a permanent resident”).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, entered the United States without inspection, admission, or parole in 1992. The Applicant’s father filed a Form I-918, Supplement A, Petition for Qualifying Family Member of a U-1 Recipient (U derivative petition), on his behalf. USCIS granted the Applicant “U-3” nonimmigrant status as the child of a victim of qualifying criminal activity from November 2013 until November 2017. The Applicant timely filed the instant U adjustment application in November 2016. The Director 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 adverse factors, particularly his arrest for domestic-related charges in [REDACTED] 2018 while he held U nonimmigrant status, outweighed the positive factors in his case. The Applicant has not overcome this determination on appeal.

A. Favorable and Mitigating Equities

The Applicant is 30 years old and has lived in the United States for more than 29 years. The Applicant’s family ties in the United States include his U.S. citizen partner, parents, siblings, and three children, two of whom are from a previous relationship. The Applicant provided evidence of stable employment at a local grocery store, volunteerism as a youth soccer league coach, and payment of taxes from 2012 to 2020. He also provided evidence that he has attended domestic violence counseling and completed the Sheriff’s Work Alternative Program (SWAP) for his 2019 domestic violence conviction. Additionally, the Applicant claimed that if he had to return to his home country of Mexico, he would no longer be able to meet his financial obligations or volunteer. He also claimed that his family, particularly his mother, partner, and children would suffer tremendously without his financial and emotional support.

On appeal, the Applicant submits updated personal statements from himself and his partner, letters of support from his cousin, business partner, and the parent of a youth soccer league participant, a flyer from the [REDACTED] Soccer Club indicating that the Applicant joined the club as a player in 2021, and

an article from the Journal of Pediatrics entitled, “Childhood Corporal Punishment and Future Perpetration of Physical Dating Violence.”

B. Adverse Factors

The Applicant’s primary adverse factor is his juvenile offense and criminal history. The record reflects that the Applicant was arrested in [redacted] California, in [redacted] 2007, when he was 15 years old, for burglary, possession of burglary tools, receiving stolen property, and unlawful taking or driving of a vehicle in violation of sections 459, 466, 496, and 10851 of the California Penal Code (Cal. Penal Code), respectively. In his statement, the Applicant explained that he was hanging out with a friend in [redacted] when they discovered an abandoned car parked on a street. He claimed that his friend suggested that they should “open it up and see what was inside.” According to the Applicant, he and his friend opened the door and began rummaging inside the car. Someone saw them inside the car and called the police. The Applicant stated that he was arrested because the police suspected that he along with his friend had stolen the car. He was transported to a local police precinct and later transferred to the Juvenile Justice Hall in [redacted] California. The Applicant pled guilty to receiving stolen property. The remaining charges were dismissed on motion of the district attorney. He was adjudged a juvenile and placed on probation. He was also ordered to comply with a curfew, submit to drug testing, attend weekend training academy (WETA), and write a letter of apology to the victim. The Applicant submitted evidence that his probation was terminated in [redacted] 2008.

The Applicant was again arrested in [redacted] in [redacted] 2009, when he was 18 years old, for battery in violation of section 242 of the Cal. Penal Code. The Incident Report from the [redacted] Police Department (incident report) states that an officer responded to a reported assault. Upon his arrival, an officer encountered a man bleeding from the nose. The man told the officer that he was attempting to break up a fight between two soccer players when he was struck in the nose. Various witnesses confirmed that the victim “grab[bed] a player who was fighting and thr[ew] him to the ground. [The victim] got on top of the player and held him down. The player’s father ran onto the field and began to strike [the victim] until he got off his son.” The victim refused to press charges, but was transported to a local hospital to treat his injuries. In his statement, the Applicant explained that “[he] got into a verbal argument with a player from the opposing team and [they] started pushing each other around.” He claimed that the opposing player’s father came out onto the field to “subdue” him, and his father intervened in order to “get that guy off of [him].” Someone called the police, who questioned everyone involved in the altercation. He was not arrested or charged with a crime. The Applicant claimed that the opposing player’s father tried to sue him and his father in civil court. Instead of paying a fine or damages, the Applicant agreed to attend counseling classes. The Applicant provided a letter from the deputy clerk at the Superior Court of [redacted] stating that the arrest record he requested was not available because the file was eligible for destruction pursuant to section 68152 of the Cal. Penal Code.

The Applicant was again arrested in [redacted] in [redacted] 2018 for stalking, corporal injury to a relationship partner, false imprisonment, and criminal threats under sections 646.9(a), 273.5(a), 236 and 422 of the Cal. Penal Code, respectively. Additionally, two enhancements were added—for grievous bodily injury-domestic violence and use of a deadly weapon, under sections of 12022.7(b)(1) and (e) of the Cal. Penal Code. In his statement, the Applicant explained that he and his partner were dealing with “bad communication and some unresolved negative rumors about each other’s behavior

from earlier in [their] relationship.” He claimed that everything came to a head that night in [redacted] 2018. He further claimed that he and his partner had an “overloaded” argument during which he “pushed” his partner and she “fell over [their] coffee table.” According to the Applicant, the argument continued into the following day. He admitted that he sent his partner several angry text messages throughout the day. Unbeknownst to the Applicant, his partner told one of her coworkers that he had pushed her the night before. She called the police, who were waiting for the Applicant when he arrived at his partner’s workplace. The Applicant was arrested and charged with domestic violence and stalking. The Applicant pled “no contest” to stalking under section 646.9(a) of the Cal. Penal Code. The remaining charges were dismissed pursuant to a plea agreement. The Applicant was placed on a conditional sentence of three years. He was ordered to serve 60 days in the [redacted] Jail, which he was permitted to complete through the Sheriff’s Weekend Alternative Program (SWAP). Finally, the Applicant was told to complete domestic violence and parenting classes, stay away from his partner,¹ issue a letter of apology to her, and pay all court costs and fines. He submitted evidence that he completed the required SWAP program, domestic violence classes, and parenting classes in [redacted] 2020, [redacted] 2020, and [redacted] 2020, respectively.

In her own statement submitted on appeal, the Applicant’s partner provides further detail regarding the [redacted] 2018 incident. She states that the Applicant received a text message from a man who claimed that he had met her at a local convenience store and had given him the Applicant’s phone number to text her. She stated that she told the Applicant that she did not know who the man was. The Applicant told her to tell the truth then hit her in the upper arm with his fist. He told her to get her things and leave. She claims that she went upstairs to get her things. The Applicant followed her upstairs, stood in the doorway, and continued questioning her about the man. He then grabbed a pushcart pole and “hit her on her left arm and left thigh multiple times while she was standing up.” The Applicant eventually calmed down and went downstairs. Later that evening, she cooked dinner for the Applicant and placed it on the coffee table in front of him. She told the Applicant that she was going to a nearby store to get a money order. The Applicant stated “you’re not going to eat with me?” then “shoved the plate off the coffee table and pushed [her] over the table.” The plate broke and the food scattered over the floor. She started to clean it up, but the Applicant told her to leave it. When she came back from the store, the Applicant had cleaned up the mess and thrown the broken plate in the trash. She stated that they showered and “went to sleep like nothing happened.” The following day, she went to work where one of her coworkers sensed that something was wrong. She told her coworker what had happened the night before and the coworker called the [redacted] Police Department. She told the officers what happened and showed them her bruises. She also told the officers that the Applicant had sent her a text message threatening to come to her workplace with a bat. When the Applicant showed up later that day, the police arrested him for domestic violence. He remained in jail until his parents bailed him out of jail. She claimed that the Applicant was apologetic and that they decided to meet in person to discuss their relationship. In [redacted] 2019, several officers from the Sheriff’s department came to their house. They arrested the Applicant on charges of stalking, corporal injury with a deadly weapon, false imprisonment, and criminal threats. She explained that she tried many times to get the charges dropped. She stated that she wrote to the district attorney’s

¹ The Applicant’s partner was granted a Criminal Protective Order in [redacted] 2019 for three years, which prohibited the Applicant from “harass[ing], strik[ing], threaten[ing], assault[ing] (sexually or otherwise), follow[ing], stalk[ing], molest[ing], destroy[ing] or damag[ing] personal or real property, disturb[ing] the peace, keep[ing] under surveillance, or block[ing] movements of the protected persons named [in the protective order].”

office explaining why she wanted to the charges dropped. However, the office informed her that they had to charge the Applicant with something and eventually agreed to pursue a stalking charge.

We additionally note that the Applicant's partner described two other incidents of domestic violence in [] 2018 and [] 2018. She explained that she and the Applicant would often share each other's locations on the Find My iPhone app. She stated that, on several occasions, the app indicated that she was not at work when she in fact was. As a result, the Applicant would accuse her of lying to or cheating on him. She claimed that she repeatedly denied it, which led to an argument and a physical altercation. The first time this happened was in [] 2018. The Applicant "punched [her] multiple times in the upper arms." She recalled that she decided to not call the police because she believed that the Applicant would not do it again. However, it did happen again in [] 2018. Again, the Applicant accused her of lying and cheating and punched her in the upper arms multiple times. The Applicant's partner stated that "the hits left bruises but [she] did not bleed" and that "the bruises felt sore the next day but did not prevent [her] from sleeping or working." She also claimed that "[the bruises] felt like the bruises you get when you hit your knee or elbow on something." She acknowledged that she thought about leaving the Applicant after he was arrested in 2018. She packed her belongings and stayed with her mother for one night. However, she thought about the situation and decided that "[she] was going to help the man [she] loves overcome whatever triggers his violence."

The Applicant expressed remorse for his criminal history. He admitted that "[he] ha[s] made mistakes in [his] life that have complicated getting [his] residency." He stated that if he could go back in time, "[he] would have done everything possible to stay away from his second and third contacts with the police." Regarding his first arrest, the Applicant stated that "[he] would have made a better choice about who [his] friends were." He apologized for his actions during the [] 2018 incident and that he and his partner have sorted through the causes of their relationship problems. He claimed that he and his partner "rarely have any disagreements nowadays" and that he is fortunate that his partner has accepted his remorse. He highlights his completion of 52 weeks of domestic violence classes and 12 days of parenting classes, which he claims have taught him how to maintain a happy and healthy relationship with his partner and children. The Applicant's partner asks us to consider that she and the Applicant "have risen above the episodes" and "learned to put them behind [them]." She notes that the Applicant "has absolutely changed as a person" and is now "a great man, loving father, and a partner." She maintains that the Applicant has not berated or threatened her in any way since [] 2018, and that she "now know[s] that sticking by [the Applicant] [wa]s the best decision [she has] made."

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, stable employment, volunteerism as a

soccer coach, payment of taxes, and numerous letters of support from family, friends, and coworkers. We further acknowledge the hardship that the Applicant and his family would suffer if he was unable 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, namely his [] 2007 juvenile adjudication for receiving stolen property, burglary, and possession of burglary tools, [] 2009 conviction for battery, and his [] 2018 arrest for domestic violence-related offenses, outweighed the positive and mitigating equities in his case. On appeal, the Applicant asserts that it was "arbitrary and capricious" for the Director to find that he committed a domestic violence-related offense while simultaneously stating that she did not have enough evidence to fully evaluate the severity of his conduct. The Applicant further asserts that he submitted sufficient evidence of positive and mitigating equities including new statements from himself and his partner and letters of recommendation attesting to his good character, to outweigh his [] 2019 conviction for stalking.

In considering an applicant's criminal history in the exercise of discretion, we consider multiple factors including the "nature, recency, and seriousness" of the crimes and underlying conduct. *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978). Here, the Applicant was arrested in [] 2007 for burglary, receiving stolen property, and possession of burglary tools and [] 2009 for assault—offenses which evidence a serious risk to the safety and property of others as well as a disregard for the laws of the United States. He was ultimately found guilty of and adjudicated delinquent based on receiving stolen property. While we acknowledge that the Applicant's 2007 juvenile adjudication is not a conviction under the immigration laws, *Matter of Devison-Charles*, 22 I&N Dec. 1362, 1373 (BIA 2000), 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).

Additionally, the Applicant's [] 2018 arrest for stalking, corporal injury to a relationship partner, false imprisonment, and criminal threats occurred recently, both while he was in U status and after he applied to reside in this country permanently as an LPR. The offenses are particularly serious as the record reflects, and the Applicant does not dispute, that the victim of this incident was a family member—the Applicant's partner—and involves the very type of behavior that U nonimmigrant status seeks to protect against. In fact, the record reflects that the Applicant pled no contest to and was convicted of stalking and the Applicant's partner was granted a protective order due to the Applicant's abusive behavior during this incident, which was scheduled to remain in place until approximately [] 2022. See 8 C.F.R. §§ 214.14(a)(9) (including, as qualifying criminal activity, "domestic violence" and "stalking"), (a)(14)(iii) (stating that a person culpable of the qualifying criminal activity is excluded from being recognized as a victim of such activity and ineligible for U nonimmigrant classification), 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination and that it "will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of" certain classes of crimes). See also Interim

Rule, *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007) (“In passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence . . . while offering protection to victims of such crimes.”).

As we previously noted, the Applicant’s partner recounted two other occasions during which the Applicant was both violent towards her and physically abused her resulting in bruising to her upper arms. While the Applicant was never arrested or charged with a crime for either incident, we can consider his conduct in our discretionary analysis. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996) (including, in adverse factors relevant to discretionary relief, “the presence of other evidence indicative of an [individual’s] bad character or undesirability as a permanent resident”). Similarly, although the [redacted] 2018 charges for corporal injury to a relationship partner, false imprisonment, criminal threats and enhancements for grievous bodily injury and use of deadly weapon against the Applicant were ultimately dismissed in his favor, the fact that the Applicant was not convicted of the underlying charge, or that the charge was ultimately not sustained by the Criminal Court, does not equate with a finding that the underlying conduct or behavior leading to the charge did not occur.² *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination and that it “will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of” certain classes of crimes).

In summary, the Applicant has a juvenile offense and criminal history including arrests for burglary, possession of burglary tools, battery, and receiving stolen property—offenses which evidence a repeated disregard for the safety and property of others and the laws of the United States. The Applicant was also arrested for multiple domestic violence-related offenses while he held U nonimmigrant status and after applying to reside in this country permanently as an LPR, offenses which posed a significant risk to others and the U visa program was designed to protect against. While we acknowledge the Applicant’s arguments and his aforementioned positive and mitigating equities submitted before the Director and supplemented on appeal, 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, severity, and recency of his juvenile offense history and criminal convictions before and 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.

² As stated above, the record indicates that the Applicant’s partner persuaded the district attorney’s office to reduce or dismiss the charges.