



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

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

In Re: 18447246

Date: FEB. 2, 2022

Motion on Administrative Appeals Office Decision

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

The Applicant seeks to become a lawful permanent resident based on his “U” nonimmigrant status as a victim of qualifying criminal activity under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), and we dismissed the Applicant’s subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider, where the Applicant submits new evidence, resubmits evidence already in the record, and argues that we erred in the decision dismissing his appeal. Upon review, we will grant the motion to reopen and remand the matter to the Director for the issuance of a new decision. The motion to reconsider is moot.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) “may adjust the status” of a U nonimmigrant if he or she meets all other eligibility requirements and “in the opinion” of USCIS, his or her 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 eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This burden includes showing that discretion should be exercised in his or her favor. 8 C.F.R. §§ 245.24(b)(6), (d)(11). USCIS may consider all factors when making its discretionary decision on the application. 8 C.F.R. § 245.24(d)(11). Generally, favorable factors such as family unity, length of residence in the United States, employment, community standing, and good moral character may be sufficient to merit a favorable exercise of administrative discretion. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970); *see also* 7 *USCIS Policy Manual* A.10(B)(2), <https://www.uscis.gov/policymanual> (providing guidance to USCIS adjudicators regarding factors to consider in discretionary adjustment of status determinations). However, where adverse factors are present, the applicant may submit evidence of mitigating equities. 8 C.F.R. § 245.24(d)(11) (stating that, “[w]here adverse factors are present, an applicant may offset these by submitting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate”).

A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

As previously outlined in our appeal decision, we acknowledged the positive and mitigating equities present in the Applicant's case: his four minor United States citizen children, his partner and various extended family members, his residence in the United States since 2006, his longstanding employment, payment of taxes and financial support for his family, his concerns about returning to Mexico due to violence and the possible socioeconomic impact on him and his family, and his statements regarding his rehabilitation. We additionally acknowledged the Applicant's submission of the [redacted] Police Department probable cause affidavit underlying his [redacted] 2015 arrest on charges of domestic battery and hindering an emergency call, as well as documentation establishing that the charges were ultimately dismissed by the State Court of [redacted]. However, we nonetheless agreed with the Director that the Applicant did not merit a favorable exercise of discretion based on the nature, recency, and seriousness of the arrest and the lack of requested relevant documentation corroborating the specific circumstances underlying it as articulated in his statements, namely the underlying arrest report.

On motion to reopen, the Applicant submits new evidence material to both the Director's underlying decision and our previous decision, namely an updated statement concerning his efforts to obtain the police report behind his [redacted] 2015 arrest and a copy of Georgia Code Annotated (Ga. Code. Ann.) section 35-3-37, discussing an individual's criminal history record information and the restrictions on release.¹ According to the case summary listing the orders of the court, it appears that the disposition of the court included the "restriction" of the Applicant's case. On motion, the Applicant contends that the arrest report requested by USCIS is not available as his case has been "restricted" by the court pursuant to section 35-3-37 of the Ga. Code. Ann. The Applicant clarifies, through counsel, that "when a record is restricted, all access to the criminal history record will not be available to a private person or business . . . [to include]: fingerprints, photographs, and reports." Ga. Code. Ann. § 35-3-37 (West 2022). In his new statement on motion, the Applicant states that he "made every effort to get all the records of [his] arrest to provide it to USCIS. A year ago, [he] went to the courthouse in Atlanta to request the arrest report [and] gave all the documents [he] received to [his] lawyers, which unfortunately did not include the arrest report." He further states that he "made every possible effort to retrieve and submit this report, but [his] efforts were in vain. Every document that [he] had access to [he has] submitted to USCIS."

While the Applicant's [redacted] 2015 arrest, involving domestic battery and hindering the victim from making an emergency call, occurred about two months after he was granted U-1 nonimmigrant status, the record shows that the Director considered the arresting officer's report to be a vital piece of evidence in determining whether the Applicant warranted a favorable exercise of discretion, given the

¹ The Applicant also submits new evidence on motion to reopen including: evidence of his continued employment; an updated statement from his partner, the victim of his [redacted] 2015 arrest, discussing the [redacted] 2015 incident and the Applicant's rehabilitation; a letter from a Licensed Professional Counselor indicating that the Applicant attended weekly therapy sessions from July 2020 to September 2020; and multiple letters of support from family and friends attesting to the Applicant's good moral character.

nature of the offense, and that his failure to provide the report was a significant negative factor. However, the Applicant previously submitted the probable cause affidavit underlying his arrest and was both forthcoming regarding, and readily acknowledged, his conduct. Additionally, and critically, the Applicant submits an explanation of his efforts to obtain the arrest report requested by the Director, as well as new evidence regarding his positive and mitigating equities, on motion. Accordingly, we deem it appropriate to remand the matter for the Director to consider the evidence in the first instance and to reconsider whether a favorable exercise of discretion is warranted.

III. CONCLUSION

As the Director did not have the opportunity to consider new evidence that is before us on motion to reopen, and the lack of such evidence led the Director to conclude that the Applicant did not warrant a favorable exercise of discretion, the matter is remanded to the Director to consider this evidence and issue a new decision.

ORDER: The motion to reopen is granted and the matter is remanded to the Director for the entry of a new decision consistent with the foregoing analysis.