U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19426036

Date: FEB. 7, 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) based on his derivative "U" nonimmigrant status 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 U Nonimmigrant (U adjustment application), and subsequent motion to reopen and motion to reconsider, 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 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; *see also* 8 C.F.R. § 245.24(b)(6). The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); *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(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 adjustment of status determinations). However, where adverse factors are present, the applicant may submit evidence

establishing mitigating equities. *See* 8 C.F.R. § 245.24(d)(11) ("[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, a native and citizen of Mexico, was granted U-3 status from March 2015 until September 2018. The Applicant timely filed the instant U adjustment application in May 2018.

The Director denied the Applicant's U adjustment application, concluding that he did not submit sufficient evidence to establish that he warranted adjustment of status to that of an LPR as a matter of discretion. The Director acknowledged the positive and mitigating equities present in the Applicant's case: his employment and filing of taxes, and his U.S. citizen son. However, the Director found that his juvenile offense and criminal history outweighed these positive and mitigating equities, highlighting the serious and violent nature of his [redacted] 2013 arrest for obstruction of justice and the lack of a related court disposition. The Director also cited the Applicant's additional arrests, listed in the Utah Case Summary provided, for retail theft in [redacted] 2014 and school violations in [redacted] 2011, and noted that court dispositions likewise had not been provided for these incidents. Finally, the Director acknowledged the Applicant's statements that he is not involved in a gang and simply socialized with some old friends that were gang members at the time of his criminal activity, and explained that associating with gang members and involvement in a shooting incident involving gang members is a significant adverse factor in the exercise of discretion.

In dismissing the Applicant's motion to reopen and motion to reconsider, the Director acknowledged that the Applicant's length of residency in the United States is also a positive equity in his case; however, his residency has been marked by multiple arrests and negative encounters with law enforcement, which limit its weight in the exercise of discretion. The Director noted that, while the Applicant stated, through counsel, that his child and partner would face hardship if he were not allowed to remain in the United States, he did not provide any evidence in support of this statement. The Director also noted that, while the Applicant stated that he no longer associates with the friends that are involved in gangs, he also did not provide any evidence in support of this statement. Further, the Director noted that, while the Applicant stated that he plans to enter the apprenticeship school and take courses to become a journeyman, he did not provide evidence in support of these statements either. The Director concluded that the positive factors in the Applicant's case do not outweigh the concerns regarding public safety, disregard for U.S. law, association with gang members, and involvement in a shooting incident involving gang members, which are not behaviors in the public interest.

On appeal, the Applicant provides a brief from counsel and an updated letter from a family friend. The Applicant states, through counsel, that he was not charged with "felony obstruction of justice," but rather with a "class B misdemeanor / against public order," which was adjudicated in [redacted] 2012, with the following dispositions: detention home, detention released, hours community service, motion granted, other administrative action, release from home detention, restrictions/no contact, and terminate jurisdiction. Counsel concludes that the evidence supports a finding that favorable discretion should be exercised in this case as is warranted for family unity and stability, and is in the public interest.

A. Positive and Mitigating Equities

In the record before the Director, the Applicant provided evidence of his family ties in the United States, which include his U.S. citizen son, his partner, his immediate family, his residence in the United States since he was an infant, and his continued employment and payment of taxes. He also provided letters from family and friends attesting to his good moral character.

B. Adverse Factors

The Applicant's primary adverse factor is his juvenile offense and criminal history, specifically multiple juvenile adjudications, all prior to U nonimmigrant status. The record includes substantial evidence of two interactions with law enforcement where the Applicant faced the imposition of charges, one in [redacted] 2010 and another in [redacted] 2013. The incident in [redacted] 2010 involved a street fight among juveniles. According to the police report, the Applicant and his two friends were walking home when another group of boys started the altercation by punching and hitting one of his friends. The Applicant then rushed to help his friend, and was punched in the face. The Applicant stated to police that he had a knife and threw it to his friend but that he, himself, had not brandished it during the altercation. The police officer noted that the Applicant's mother stated he had a bloody nose when he got home and the police officer noticed that the bridge of his nose was red and swollen. According to the police report, "the District Attorney's office filed charges on [the Applicant] [who] was charged with [C]lass [A] misdemeanor brandishing a weapon during a fight." However, the Applicant did not provide any court dispositions or juvenile adjudications regarding this incident. The "Case History Summary" from the Utah State Courts, submitted in response to the Director's request for evidence (RFE), indicates that, for the offense that occurred on [redacted] 2010, the Applicant was charged with "Dis. Cond. -Fighting Continues Class C Misdemeanor / Against Public Order," and the dispositions were: continue court's jurisdiction, hours community service, motion granted, other administrative action, plea in abeyance, and school attendance, adjudicated in [redacted] 2011.

According to the Applicant's statement regarding this incident, the other boys started the fight out of nowhere and he stated that his intention was to help his friend when he entered the melee. He stated that "once the person that was beating on [his] friend noticed [him] approaching him the guy and his group started to finally back off. Once [his] friend was able to get up, [they] got on [their] bikes and started to ride away and head home because [they] didn't want any trouble. Once [they] got home, a couple of officers showed up to [his] house and asked all the questions . . . ." The Applicant did not discuss being punched in the face and did not discuss or acknowledge the brandishing of the knife in his statement.

The incident in [redacted] 2013 involved gunfire out of a vehicle where the Applicant was located. According to the police report, the Applicant and his friends were eating at a local restaurant when a group of several males began harassing them about gang membership. It states that the Applicant's group had a verbal altercation with the males in the restaurant parking lot and left in a friend's car when one of the eight individuals in the car fired a handgun out of the window at the other males in the parking lot. The police followed the vehicle and apprehended all eight of the occupants, including the Applicant. According to the police report, when the Applicant was questioned about the incident,

he stated that "[a]fter eating, they got into [a friend's] vehicle and began to drive away, when 'the cop' pulled behind them [and the] next thing he knew 'the cop' pulled them over." When the officer asked the Applicant about the shots fired, "[he] stated that he was tired and didn't know about any shots fired." The police officer then stated that he asked the Applicant several more questions about the shots fired and the handgun and "it was obvious that [the Applicant] was withholding information and refused to tell [the officer] what had happened." However, again, the Applicant did not provide any court dispositions or juvenile adjudications regarding this incident. The "Case History Summary" from the Utah State Courts does not list any offense that occurred in [redacted] 2013. According to Applicant's counsel on appeal, he states that the summary shows that the Applicant was not charged with "felony obstruction of justice,' but rather with a "class B misdemeanor / against public order," which was adjudicated in [redacted] 2012 with the following dispositions: detention home, detention released, hours community service, motion granted, other administrative action, release from home detention, restrictions/no contact, and terminate jurisdiction.

The Applicant provided a statement regarding this incident, as follows:

> I was with a couple of friends hanging out for Halloween and later that night we all got hungry so we all decided to drive to a Mexican restaurant . . . . As we were all eating and having a good time, one of my friends was tired and they decided to take a nap in one of the booths inside the restaurant. Out of nowhere some [P]olynesian guy that was walking by decided to kick my friend in the legs and told him to wake up for no reason. That's when my friend and I noticed they were going to try and start an altercation. We all quickly reacted to the situation, not wanting any trouble[,] so we all finished eating and got up and walked out and we ended up just deciding to end the night. As we're getting into our car[,] the [P]olynesian group starts to walk out of the restaurant and starts running towards us, saying bad stuff to us, and causing a scene. That's when one of the people in my group decided to pull out a gun and fired it into the air as self defense to scare them off and it worked. Then we drove off to get away from the situation as we didn't want any trouble in the first place. That's when a police officer ended up pulling up behind us and ended up pulling us over and then the police officers took us in to get fingerprinted and told my whole group that one of us had to be the one to fire the gun and as soon as one of us takes the fault for it that the others wouldn't be charged and would be released to our parents since we were underaged. The person who shot the gun ended up taking fault for shooting the gun and the rest of us were released to our parents and we were never supposed to be charged since we did not shoot the gun or caused [*sic*] the trouble. To this day, that charge does not show up on any of my records because it was either dismissed or dropped. I was at the wrong place at the wrong time.

Further, the "Case History Summary" from the Utah State Courts lists additional interactions the Applicant has had with law enforcement. According to this summary, the Applicant also was charged with the offense of "Retail Theft <$500 Class B Misdemeanor / Against Property" in [redacted] 2014, and the disposition is indicated as "NJ Financial Assessment," and the offense of "Sch. Violations- Not Higher Edu Class B Misdemeanor / Against Public Order" in [redacted] 2011, and the disposition is indicated as "NJ Counseled/Warned," status closed.

The Applicant also provided a statement regarding his involvement in gang activity in response to the RFE and again on motion to the Director. The Applicant initially stated that he "was never involved or a member of a gang" and that he was only affiliated with some old friends who were gang members at the time of the incidents. He stated that the "only reason why [he] hung out with some individuals who were associated with a gang was because [he'd] known them before they were in a gang and [he] never saw them as a gang member because of that. In [his] eyes, they were just friends who [he] was growing up with." On motion, the Applicant stated that he was never a part of, a member, or ever involved with any type of gang group and he was never involved in any illegal gang activity. He stated that he was only associated with those individuals because he knew them before they got involved in gangs and would not have associated with them if he knew they were gang members. He also stated that he stopped surrounding himself with those individuals and told his friends that if they did not change, he would stop being their friend. He indicated that some of his friends have changed and he remains friends with them and those who have not changed, he has completely removed from his life.

C. A Favorable Exercise of Discretion is Not Warranted on Humanitarian Grounds, to Ensure Family Unity, or Otherwise 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 a careful review of the entire record, including the new evidence submitted on appeal, the Applicant has not met his burden of establishing that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

First, as a minor, the Applicant was arrested on multiple occasions. While the actual dispositions of those charges remain largely unknown, we recognize that 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 and the circumstances surrounding them 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 alien's bad character or undesirability as a permanent resident"). Accordingly, on appeal, we have considered the full scope of the Applicant's history of juvenile offenses.

Next, 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). Moreover, 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." *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991); *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"). To determine whether an applicant has been rehabilitated, we examine not only an applicant's actions during

the period of time for which they were required to comply with court-ordered mandates, but also after they have satisfied all court-ordered and monitoring requirements. *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"). Finally, when an individual is on probation, they enjoy reduced liberty. *See, e.g., 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); *U.S. v. King*, 736 F.3d 805, 808-09 (9th Cir. 2013) ("Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled.") (internal quotations omitted).

In this case, as noted above, the Applicant was arrested at least two times, as has been fully disclosed in the record, once for brandishing a weapon during a fight, and another for obstructing justice. The third offense for retail theft in 2014, listed on the "Case History Summary" from the Utah State Courts, has not been acknowledged or discussed by the Applicant at any time in the record. We acknowledge and do not seek to diminish the Applicant's assertions that he has never been a gang member and has never been involved in gang activity. Nonetheless, we must adjudicate the Applicant's U adjustment application based on the record before us and the Applicant readily admits being friends and spending time with members of a gang, as well as being involved in several gang-related incidents. One of the incidents involved the firing of a weapon. While the "Case History Summary" from the Utah State Courts provides the offense date, offense description and severity, disposition, and status for each offense (five listed), the Applicant has not submitted the details of his plea or the details of his adjudication and sentencing for any of the arrests indicated in the record. The dispositions listed on the summary are unclear as to the Applicant's plea or admission of guilt, and any imposition of actual consequences or adjudications for his actions. Furthermore, the Applicant asserts on appeal, through counsel, that, in reference to his arrest in [redacted] 2013, he was not charged with "felony obstruction of justice," but rather with a "class B misdemeanor / against public order," which was adjudicated in [redacted] 2012, with the following dispositions: detention home, detention released, hours community service, motion granted, other administrative action, release from home detention, restrictions/no contact, and terminate jurisdiction. However, this offense, listed on the "Case History Summary," shows an offense date in [redacted] 2012, an "adjudicated" date of [redacted] 2012, and a court date of [redacted] 2012, all one year or more prior to the date of the actual incident. The "Case History Summary" does not list any offense with a date of [redacted] 2013, as is listed on the police report.

Moreover, the Applicant's explanations of the circumstances giving rise to his arrests are inconsistent with the contemporaneous arrest reports. First, in the Applicant's account of the initial incident in [redacted] 2010, he did not indicate that he was hurt in the fight or punched by the other individual who was assaulting his friend when he went to go help. He simply indicated that when he approached his friend, the other individuals backed off and the Applicant and his friends left. More seriously, the Applicant also did not discuss the brandishing of the knife or his throwing a knife to his friend during the fight. Then, in the Applicant's account of the second incident in [redacted] 2013, he stated that his friend just fired one gunshot in the air in self-defense, to scare off the other individuals. He further seemed to indicate that the police were following their vehicle and pulled them over unprovoked. However, in the police report, the officer indicated that the Applicant "stated that . . . [he] didn't know about any shots fired" and the officer observed that "it was obvious that [the Applicant] was withholding information and refused to tell [the officer] what happened." Here, these inconsistencies

regarding the circumstances surrounding the incidents, and the documentation of the Applicant's refusal to cooperate with police in relevant reports, raise serious concerns regarding the specifics of the events that took place and the Applicant's involvement in them, particularly given the seriousness of the incidents, as well as whether he has accepted full responsibility and expressed remorse for his actions. The Applicant has not stated, at any time in the record, that he takes responsibility for his actions during these incidents or is remorseful for his involvement. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 304-5 (BIA 1996) (explaining that rehabilitation includes the extent to which an applicant has accepted responsibility and expressed remorse for his or her actions).

In sum, we acknowledge the record contains positive and mitigating equities. The Applicant has been in the United States since infancy and has family ties in the United States, including a U.S. citizen son. He also works to support himself and his child, and has paid taxes. Several letters of support describe him as a good man, kind, hardworking, and a good father. Nonetheless, considering the nature and seriousness of his juvenile offense and criminal history and the conduct underlying it, as well as the lack of sufficient evidence in the record regarding the outcome of each incident and the Applicant's related rehabilitation we agree with the Director that the Applicant has not demonstrated that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that he warrants a positive exercise of our discretion to adjust his status to that of an LPR under section 245(m) of the Act. The application will remain denied accordingly.

III. CONCLUSION

The Applicant has not established that his adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, he 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.