



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

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

In Re: 18284089

Date: FEB. 08, 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 (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on his “U” derivative nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and we dismissed the Applicant’s appeal. The matter is now before us on a motion to reopen.<sup>1</sup>

On motion, the Applicant submits a brief and additional evidence. Upon review, the motion to reopen will be granted and the matter will be remanded to the Director for the issuance of a new decision.

**I. LAW**

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record as the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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).

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<sup>1</sup> The record reflects that the Applicant indicated on the Form I-290B, Notice of Appeal or Motion, that he intended to file a combined motion to reopen and to reconsider. However, as the appellate brief explicitly identifies the filing as a motion to reopen and provides arguments related to a motion to reopen, we will review the matter as a motion to reopen.

A favorable exercise of discretion to grant an applicant adjustment of status to that of an 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) (providing 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 was granted U-3 derivative status in October 2014 through September 2018. In September 2018, he filed the instant U adjustment application. The Director subsequently denied this U adjustment application, concluding that a favorable exercise of discretion was not warranted to adjust his status to that of a lawful permanent resident. In relevant part, the Director determined that the positive equities in the Applicant’s case, including his lengthy residence in the United States and his employment status, were outweighed by the adverse factor of his criminal history, consisting of a [REDACTED] 2019 conviction on the charge of Misdemeanor Alcohol Related Reckless Driving, and a series of traffic-related infractions, including a [REDACTED] 2019 arrest for driving-related infractions while on probation for the [REDACTED] 2019 conviction.<sup>2</sup> The Director noted that the Applicant had not provided evidence demonstrating that he had successfully completed the terms of his probation for the [REDACTED] 2019 conviction, that the record lacked sufficient evidence to address the circumstances surrounding his subsequent [REDACTED] 2019 arrest for driving-related infractions, and that the Applicant’s Form I-693, Report of Medical Examination and Vaccination Record (medical exam), did not include a discussion of the Applicant’s alcohol-related arrest and conviction. Accordingly, the Director concluded that the Applicant had not offered evidence sufficient to demonstrate his rehabilitation.

The Applicant then appealed the matter to us, providing evidence to establish additional positive equities in his case, and an updated medical examination discussing his alcohol-related offense. The Applicant submitted documentation relating to the disposition of his [REDACTED] 2019 arrest. However, he acknowledged that he remained on probation for the [REDACTED] 2019 offense. In our decision, incorporated here by reference, we considered the additional positive factors in evaluating whether a favorable exercise of discretion was warranted. However, we determined that these positive factors were not sufficient to overcome the negative factor identified by the Director in her decision. Although we acknowledged that the Applicant provided a medical exam addressing his alcohol-related arrest and conviction, we advised that we were unable to determine the extent to which the Applicant had been rehabilitated as he remained on probation for his [REDACTED] 2019 alcohol related arrest. We noted the recency of his [REDACTED] 2019 arrest further precluded us from evaluating the extent to which the Applicant had been rehabilitated and that although the Applicant provided documentation related to its criminal disposition, he had not offered a detailed statement explaining the circumstances

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<sup>2</sup> The Director also advised that the record lacked evidence sufficient to establish additional positive equities claimed by the Applicant and afforded less weight to them accordingly.

surrounding it, as requested by the Director in a request for evidence in the record below. As we could not determine the extent to which the Applicant had been rehabilitated, we were unable to conclude that the additional positive equities presented on appeal outweighed the negative equity of his criminal history. Accordingly we determined that the Applicant had not overcome the Director's determination that a favorable exercise of discretion was not warranted to grant the Applicant an adjustment of status to that of LPR.

On motion the Applicant submits new evidence which he argues establishes his eligibility, most relevantly updated criminal history documentation and an updated personal statement describing the circumstances leading up to his [ ] 2019 arrest. The updated criminal history documentation establishes that the Applicant was formally discharged from probationary supervision for the [ ] 2019 conviction in [ ] 2021, that his guilty plea was set aside, and that the conviction was dismissed.<sup>3</sup> In the updated personal statement, the Applicant provides a detailed description of the circumstances leading up to his [ ] 2019 arrest.

As the Applicant has submitted new evidence directly related to the grounds for our dismissal of his appeal, we will grant the motion to reopen. We further will remand the matter to the Director for the issuance of a new decision and reconsideration of whether the Applicant has met his burden of establishing that a favorable exercise of discretion is warranted.

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

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<sup>3</sup> The Act dictates, and the Applicant does not dispute, that the offense remains a conviction for immigration purposes. *See* section 101(a)(48)(A) of the Act (defining a "conviction" for immigration purposes as "a formal judgment of guilt . . . of, if adjudication of guilt has been withheld, where . . . the [individual] has entered a plea of guilty . . . and . . . the judge has ordered some form of punishment, penalty, or restraint on the [individual]'s liberty to be imposed.").