



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

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

In Re: 18166949

Date: FEB. 14, 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 her “U” 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). A motion to reopen and reconsider filed by the Applicant was also dismissed by the Director, and the matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. 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 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 is a 27-year-old citizen of Mexico who entered the United States with a border crossing card as a tourist at ten years of age and never departed. In November 2011, the Director granted the Applicant U-1 nonimmigrant status as a victim of abusive sexual contact and sexual assault. The Applicant filed her U adjustment application in February 2015. The Director denied the application, concluding that the Applicant’s positive and mitigating equities were outweighed by her arrest—while she held U nonimmigrant status—for Pimping and Pandering of a Minor over 16 for the purpose of prostitution, and Conspiracy to Commit Pimping and Pandering. As noted by the Director, this arrest occurred approximately one month before she filed her U adjustment application. Ultimately, the Applicant was convicted of Conspiracy to Commit Pimping and Pandering, a felony under the California Penal Code.¹ Accordingly, the Director concluded the Applicant had not established that her continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that she warranted a positive exercise of discretion to adjust her status to that of an LPR. The Applicant has not overcome this determination on appeal.

A. Favorable and Mitigating Equities

As noted by the Director, the Applicant provided evidence that she is a single mother of a United States citizen child, and both of her parents and four siblings reside in the United States. The Applicant also stated that her son has mental health challenges. The Applicant reported that she has resided in the United States since January 2005. The Director acknowledged the seriousness of the abuse the Applicant suffered which was the qualifying criminal activity that formed the basis for her eligibility to petition for and receive U-1 nonimmigrant status, and her assistance provided to law enforcement in the investigation and prosecution of the perpetrator who committed crimes against her and others, for which he was convicted and sentenced to life in prison in the United States. Although the Director also acknowledged the Applicant’s stated fear of returning to Mexico and perhaps being harmed by her perpetrator in the event he someday is paroled—the earliest possibility being the year 2035—and removed and extradited to Mexico following his release, the Director did not view this future scenario as a mitigating factor. The Director further noted that if the Applicant’s perpetrator were to ever be expedited to Mexico, he would face a sentence of over 20 years in that country for his alleged past criminal act of aggravated homicide there.

On motion to reopen and reconsider, the Applicant stated, through counsel, that the Director failed to consider evidence that was previously submitted by the Applicant prior to denying the adjustment application. In the motion dismissal, the Director acknowledged that correspondence submitted in February 2017 was not interfiled into the record of proceeding and therefore was not reviewed prior to the issuance of the decision. The Director did not indicate that this was the result of any error but did consider such evidence as well as additional evidence submitted on motion, concluding that the evidence was not sufficient to change the outcome of the denial and thus dismissing the motion.

¹ See California Penal Code §§ 182(A)(1) and 266i(a).

The new evidence and copies of previously submitted evidence submitted by the Applicant on motion included the following, as referenced by the Director: mail tracking documents; various general correspondence; a personal statement from the Applicant; a felony complaint for arrest warrant; court minutes; a letter from a social worker; documents related to the Applicant's perpetrator; birth certificates for the Applicant's child and husband; marriage license and certificate for the Applicant and her husband; and various letters of support from the Applicant's family.

In her personal declarations provided in the record of proceeding, the Applicant stated that she entered the United States at the age of ten when her family fled Mexico due to threats of violence made against them and she has lived here ever since. She reported and the evidence of record demonstrates that she was sexually abused by her step-grandfather after her entry to the United States and, as noted previously, she cooperated with the investigation. The Applicant stated that she is the primary caretaker for her U.S. citizen son and if she were forced to return to Mexico both he and her husband would suffer. She further stated that since marrying her husband she has been able to stay home and take care of her son and go back to school to get her high school diploma. The Applicant stated that she no longer works as an exotic dancer, her family is important to her, and she helps the family a lot with finances by helping pay the bills.

B. Adverse Factors

The primary adverse factors are the Applicant's criminal history stemming from her [redacted] 2015 arrest on felony charges of pimping and pandering a minor for the purpose of prostitution. The evidence of record establishes, and the Applicant does not dispute, that she was arrested and subsequently convicted of Conspiracy to Commit Pimping and Pandering, a felony under the California Penal Code. She was sentenced to 270 days in the county jail, five years' probation and 60 hours of community service, and she served 51 total days in confinement prior to early release. While on probation for this conviction, the Applicant missed required court dates and an arrest warrant was issued by the court and she was then arrested again and pled guilty for the probation violation. In her personal statements contained in the record, the Applicant states the following regarding the circumstances which preceded and led to her arrest:

For the last two years, in addition to working as a hostess at [a] restaurant, I had been supplementing my income by working on and off as a licensed exotic dancer. During this time I met a girl named A-². I met her through her boyfriend, who she was living with at the time. I got to know her and we became friends. One day, A- called me and told me that her boyfriend was forcing her [to] be with other men in a sexual way and he was being physically abusive towards her. She called because she felt trapped and didn't know what else to do.

Because I am a sexual assault survivor myself, I identified with A-. I wanted to help her get out of that situation. I told her I would come and pick her up, and that she could stay with me at my home while she got her feet on the ground. I told her that she could live with me rent-free and could help me with household chores and by taking care of my son while I was at work. At the time A- was working at a perfume shop at the mall,

² We use initials to protect identities.

but she told me that she was interested in getting into exotic dancing. I told her that I could help introduce her to the industry if she wanted.

In the exotic dancing industry, sometimes people hire dancers to come to private events to dance for them. A- and I placed an ad offering to perform at private events and in response to the ad a man contacted us. The man agreed to hire us. On [REDACTED] 2015, A- and I went to the location where the man told us to meet him. Once we got there, the man informed us that he was a [REDACTED] Police Officer, and that he was arresting A- and I.

When I was informed that they were going to charge me for Pimping and Pandering of a Minor (PC 266i(b)), I was shocked. From what I later gathered, because A- was living with me rent-free, we were both in the exotic dancing industry, and that I would drive her to work, the police concluded that I was “pimping” her. However, this was not what was going on

The Applicant further recounted that she had no intention of pimping or pandering A-, but rather was trying to protect A- from the very thing that she was accused of doing. She further stated that she was treated unfairly by the [REDACTED] Police Department [REDACTED] and that the [REDACTED] mischaracterized the statements that she and A- made “in the police report.”³ The Applicant asserted that from the very beginning she wanted to fight her case because she was not guilty but “as the case progressed, my attorney told me that my case would be a hard case to win.” Because the Applicant’s attorney told her that she could be sentenced to a term of six years in prison if she refused to accept a plea deal, she then pled to Conspiracy to Commit Pimping and Pandering.

C. A Favorable Exercise of Discretion is Not Warranted

The Applicant bears the burden of establishing that she 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.

On appeal, the Applicant continues to maintain, through counsel, that she committed no wrongdoing. She asserts that the record evidence shows that she pled *nolo contendere*, not guilty, to the criminal charge where she thereby did not accept or deny responsibility for the charge but agreed to accept punishment. Counsel argues that the plea differs from a guilty plea because a “no contest” plea cannot be used against the defendant in another cause of action, and that because of the *nolo contendere* plea the Applicant’s statement that she did not intend to conspire and or pimp and pander her friend A- is “not inconsistent” with nor contradictory to the criminal complaint.

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). We acknowledge the Applicant’s claims that her arrest and subsequent conviction involved false accusations against her, she has consistently stated she never intended to pimp or pander her

³ We note that the police report is not contained in the record of proceeding.

friend, that she was not treated fairly by the police and that she pled *nolo contendere* to the charge of Conspiracy to Commit Pimping and Pandering on the advice of her criminal defense attorney. Nonetheless, we must adjudicate the Applicant's U adjustment application based on the record before us. The Applicant was convicted of Conspiracy to Commit Pimping and Pandering, a felony offense, during the time she held U nonimmigrant status and we cannot go behind her conviction to reassess her guilt or innocence. See *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (highlighting, in the context of immigration court proceedings, that an Immigration Judge or the Board of Immigration Appeals "cannot go behind the judicial record to determine the guilt or innocence of the [individual]").

Ultimately, it is the Applicant's burden to establish that she warrants adjustment of status to that of an LPR as a matter of discretion. Here, the Applicant has presented evidence of humanitarian, public interest, and family unity considerations. However, due to the Applicant's recent and serious felony criminal conviction involving conspiracy to commit prostitution of another individual, her sentence of 270 days of confinement in the county jail—for which she served 51 days prior to early release—and her 5 years of probation and violation of the terms of probation for such conviction, the Applicant has not established that her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, the Applicant has not demonstrated that she merits a favorable exercise of discretion to adjust her status under section 245(m) of the Act.

ORDER: The appeal is dismissed.