



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

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

In Re: 18076494

Date: FEB. 15, 2022

Motion on Administrative Appeals Office 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 for Adjustment of Status of U Nonimmigrant (U adjustment application), and we dismissed the Applicant’s appeal. The matter is now before us on a motion to reopen. Upon consideration of all the evidence submitted, we will grant the motion to reopen, and remand the matter to the Director for the issuance of a new decision.

I. LAW

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

II. ANALYSIS

The Applicant, a native and citizen of Honduras, entered the United States without being admitted, inspected, or paroled in 2006. The Applicant was granted U-1 nonimmigrant status for the period from October 2014, through September 2018, and timely filed her U adjustment application in May 2018.

In the decision to deny the Applicant’s U adjustment application, the Director identified the Applicant’s positive equities as her four U.S.-born children, financial records showing she supported her family, her purchase of a home, and that her employer described her as a valuable worker. Regarding negative equities, the Director noted that the Applicant had an outstanding removal order and gave limited weight to her explanation that she attempted to have a change of venue when she relocated. The Director also found that the seriousness of the 2012 and 2015 charges¹ against the

¹ In summary, the Director detailed that in 2012, the Applicant was charged with criminal mischief, and in 2015, the Applicant was charged with criminal mischief, possession of a weapon, simple assault, and conspiracy. In the decision to

Applicant were not mitigated by the evidence in the record and she had not sufficiently explained why the charges were dismissed. The Director concluded that the record did not suffice to establish that the Applicant's continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that he warranted a positive exercise of discretion to adjust her status to that of an LPR.

In our decision to dismiss the appeal, we detailed the Applicant's positive factors, including residence in the United States since she was 17 years old; four U.S. born children who emotionally and financially depended on her; the payment of taxes; home ownership; support from her children's teachers and neighbors; harm to her spouse and children without her; and that her native country had systemic violence and lack of a strong government. However, we determined that the arguments advanced on appeal were not sufficient to overcome the discretionary denial of the Applicant's U adjustment application. We acknowledged that although evidence in the record affirmed that the multiple charges against the Applicant were dismissed, the Applicant did not otherwise dispute the account of events in the police reports or show that the allegations were inaccurate or unreliable. The Applicant's affidavits offered little detail about the events that led to her arrests and provided no information about her interaction with police, prosecutors, a judge, or in court. Irrespective of the charges being dismissed, we explained that the Applicant admitted to her negative behavior that resulted in her arrests, and as the Director determined, evidence in the record did not show the reason why each charge was dismissed. As such, we found no error in the Director's decision to afford significant adverse weight to the Applicant's arrests and charges, notably her 2015 arrest shortly after she obtained U nonimmigrant status. We also found that the Director correctly determined that the Applicant was issued a removal order in 2007 and applicable regulations enable us to consider "all factors" in our discretionary analysis. 8 C.F.R. § 245.24(d)(11).

On motion to reopen, the Applicant reasserts eligibility for the benefit sought. She references the favorable factors in her case, including the presence of four young U.S. citizen children² that need her guidance and daily care; her support of the community; and her long-term residence and employment in the United States. She also contends that after filing the appeal, she was able to obtain a 2016 court transcript establishing that the 2015 charges against her were dismissed by a judge because the judge was "satisfied based upon the prosecutor's recommendation as well as my conversation with [the Applicant's spouse],³ [the Applicant] has completed the sessions of anger management and has tested negative for alcohol or drugs during that counseling, so I'm satisfied that based upon the circumstances I can dismiss Counts 1 and 2 of W-2015-□ as well as Counts 1 and 2 of W-2015-□" A copy of the 2016 court transcript pertaining to the Applicant's 2015 arrest is submitted with the instant motion. The Applicant also submits on motion a letter from the Municipal Court of □ dated □ 2020, returning her money order requesting documentation regarding her 2012 arrest, advising her that the court does not retain any records after seven years and the complaints were destroyed due to age. The Applicant also submits on motion a statement from her spouse, detailing that while at the beginning of their relationship was "tumultuous," with many disagreements and fights and tough years, "things calmed down" and they "rarely disagree and when we do, we talk it out in a

dismiss the appeal we noted that the Director's reference to conspiracy charges against the Applicant appeared to be in error.

² The record establishes that the children were born in 2008, 2009, 2013, and 2014.

³ The record establishes that the Applicant's spouse was identified as the "victim" in relation to both the Applicant's 2012 and 2015 arrests.

mature manner.” The Applicant’s spouse further details the hardships he and the children will experience if the Applicant is unable to remain in the United States, including his concern for his children’s emotional health and financial stability and the fears the family would have regarding the Applicant’s safety in Honduras due to the problematic country conditions there. Additional documentation submitted on motion are letters in support of the Applicant, including one from her church where she is an active member; evidence of the Applicant’s full-time employment since 2016; confirmation of the Applicant’s payment of taxes and home ownership; and country condition information, including a travel advisory from the U.S. Department of State pertaining to Honduras, the Applicant’s native country.

Based on the totality of the evidence in the record, we find that the Applicant has established on motion that she merits a favorable exercise of discretion. While we do not condone her immigration violations and the actions that led to her arrests in 2012 and 2015, previously detailed at length in the Director’s decision and in our decision to dismiss the appeal, the record establishes that the charges against the Applicant were dismissed and her spouse, the noted victim in relation to the offenses, has provided a letter in support of the Applicant’s U adjustment application. The record also establishes that the Applicant takes responsibility for her actions against her husband and expresses regret and remorse. Moreover, the record establishes the hardships the Applicant and her family, including their four young U.S. citizen children, would experience were the Applicant to relocate abroad. Finally, the record establishes the Applicant’s gainful employment, the payment of taxes, home ownership, and the support she has from her employer, friends, family members, and her church. We thus remand the matter to the Director to further determine whether the Applicant has satisfied the remaining eligibility requirements to adjust her status to that of an LPR under section 245(m) of the Act.

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