



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

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

In Re: 17255927

Date: FEB. 22, 2022

Appeal of Vermont Service Center Decision

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

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 as a victim of qualifying criminal activity. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (U adjustment application), and the matter is now before us on appeal.

The Applicant has previously filed two motions that have been dismissed by the Director. In the most recent decision, the Director dismissed the motion to reconsider after concluding that 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, as required by section 245(m)(1)(B) of the Act, because her criminal history and lack of rehabilitation outweighed her positive equities and she had not demonstrated that she merited a favorable exercise of discretion. The Director also concluded that the Applicant had not provided a reason for the motion to reconsider supported by any pertinent precedent decisions to establish legal error in the Director’s prior decision. Finally, the Director noted that the Applicant had a more extensive criminal history record than she had previously admitted and that she also had a recent arrest in  2020, after she had filed the second motion.

On appeal, the Applicant submits additional evidence and a brief and reasserts her 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 that individual demonstrates, among other requirements, that they have been physically present in the United States for a continuous period of at least three years since admission as a U nonimmigrant and continuing through the date of the conclusion of adjudication of the U adjustment application. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(a)(1). To demonstrate continuous physical presence, a U adjustment applicant must provide, in pertinent part, a photocopy of all pages of all passports that were valid during the three-year period in U status prior to the filing of the

U adjustment application, or an equivalent travel document or explanation of why they do not have a passport. 8 C.F.R. § 245.24(d)(5).

A U adjustment applicant must also establish that 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; 8 C.F.R. § 245.24(b)(6). 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”).

Depending on the nature of any adverse factors, the applicant may be required to demonstrate clearly that the denial of adjustment of status would result in exceptional and extremely unusual hardship, but such a showing might still be insufficient if the adverse factors are particularly grave. *Id.* For example, USCIS will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns. *Id.*

The applicant bears the burden of establishing his or her 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 the applicant’s 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).

## II. ANALYSIS

The Applicant, a 49-year old native and citizen of Mexico, entered the United States without inspection, admission, or parole in 1998. The Applicant was granted U-1 status from October 2014 until October 2018 as a victim of domestic violence who was helpful to law enforcement in the investigation or prosecution of the crime. The Applicant timely filed the instant U adjustment application in February 2018.

### A. Procedural History

The Applicant was granted U-1 nonimmigrant status as the victim of qualifying criminal activity on May 21, 2013, with a validity period of October 1, 2014, until September 30, 2018. The Applicant filed the instant U adjustment application in January 2017. In her U adjustment application, the Applicant indicated that she had been previously arrested, pled guilty, or been convicted of an offense, and been ordered punished by a judge; however, she also stated that she had never committed a crime

of any kind. Initially, she did not submit any supporting information relating to her criminal history record.

In February 2019, the Director issued a request for additional evidence (RFE), stating that the Applicant's criminal history check had revealed a record of the following citations or arrests by the Sheriff's Office of [ ] California:

- (1) Driving without a License on [ ] 2005;
- (2) Inflicting Corporal Injury to Spouse or Cohabitant on [ ] 2014; and
- (3) Battery of Spouse/Ex on [ ] 2015.

In the RFE, the Director asked that the Applicant provide, among other items, certified copies of all arrest reports, criminal complaints or charging documentation, certified judgement and conviction documents, proof of completion of sentencing for all of her past arrests or citations, and a statement in her own words regarding the circumstances and behavior that led to each arrest or citation. The Director also requested documentation to support a favorable exercise of discretion. The Applicant responded timely to the RFE.

In her RFE response, the Applicant submitted certified criminal case summaries from the Superior Court of California [ ] for the following:

- (1) In [ ] 2005, the Applicant pled guilty in the Superior Court of California, [ ] California, to Driving Without a License in violation of section 12500(a) of the California Vehicle Code (VC) (a misdemeanor). She was sentenced to two days in jail, 18 months of probation, and a fine of \$120. She was twice rejected by her work release program after failure to appear, but ultimately completed her term of probation;
- (2) In [ ] 2014, the Applicant was arrested for the following misdemeanor offenses: (1) Inflicting Corporal Injury on a Spouse in violation of section 273.5(a) of the California Penal Code (PC); (2) Battery/Ex Cohabitant in violation of section 243(e)(1) PC, and (3) Fight/Challenge Fight Public Place in violation of section 415(1) PC. On [ ] 2014, the Applicant pled no contest to, and was convicted of, Inflicting Corporal Injury on a Spouse, a misdemeanor, and the other two charges were dismissed. She was sentenced to 12 months of probation (imposition of sentence suspended), a fine of \$70, an additional restitution fine of \$150, and a court-ordered seminar (anger awareness). The conviction was subsequently expunged in [ ] 2014.
- (3) In [ ] 2015, the Applicant was arrested for Battery on Ex/Cohabitant in violation of section 234(e)(1) PC, a misdemeanor. The final court disposition is not in the record.

In the RFE response, however, the Applicant did not provide the actual arrest reports, criminal complaints, or court-certified judgement and conviction documents for all of the above offenses, as requested. Moreover, although the Applicant provided a personal statement, she addressed only her physical presence in the United States and not her criminal history record, even though she was

specifically requested to do so in the RFE. Finally, her RFE response included evidence intended to show that she owns a cleaning business and supports her family in order to support a favorable exercise of discretion. These include business licenses for her cleaning business and file copies of federal tax returns for the years 2014 to 2017 reflecting that the Applicant was the head of household for her family.

The Director denied the U adjustment application, finding that the Applicant had not shown that she warranted a favorable exercise of discretion. The Director noted that the Applicant had failed to provide all requested arrest reports, criminal complaints, and a personal statement regarding the above offenses. In addition, noting the Applicant's entire criminal history record, the Director stated that Battery/Ex Cohabitant in violation of section 243(e)(1) PC was a form of domestic violence.<sup>1</sup> The Director stated that without the actual arresting officer's report and a personal statement from the Applicant discussing the events surrounding her 2014 arrest, she had not provided sufficient evidence to show that her adjustment of status was warranted on humanitarian grounds, to ensure family unity, or that it was otherwise in the public interest. The Director acknowledged mitigating factors, including the presence of the Applicant's family in the United States and her U.S. citizen children, and the fact that she runs a business and pays taxes. The Director also acknowledged the Applicant's claim to provide for her family and, as a consequence, that she was concerned that she might struggle to provide for her family if she were not granted permanent resident status. Finally, the Director acknowledged the Applicant's claim that she would face difficult living and economic conditions if she were to return to Mexico. However, the Director ultimately concluded that these mitigating factors were not sufficient to overcome the negative discretionary factors in the Applicant's case.

The Applicant subsequently filed two motions to reconsider, both of which the Director dismissed. In her second motion, the Applicant included a police incident report for her [redacted] 2015 arrest which included a synopsis of the arrest information; however, she claimed that she had been unable to obtain a copy of the actual arrest report.<sup>2</sup> On motion, the Applicant also submitted a [redacted] 2012 copy of her California Criminal History Information from the California Department of Justice, showing the information relating to her 2009 offense for driving without a license. The document also shows the Applicant was separately charged with theft in violation of section 484 PC by the [redacted] Police Department on [redacted] 2009; however, the document appears to reflect that she successfully completed a deferral program with respect to the theft charge. In the most recent decision to dismiss the Applicant's motion, the Director noted that the Applicant had an additional, recent arrest in [redacted] 2020 for drug-related offenses: (1) keeping a place to sell/etc. a controlled substance; (2) rent/etc. sell/etc. controlled substance; and (3) plant/etc. marijuana. The arrest reports, complaints, and final dispositions for these offenses is not contained within the record. The Applicant filed the instant appeal of the Director's decision in January 2021.

## B. Arguments on Appeal

On appeal, the Applicant contends that her "only brush with the criminal justice system is for misdemeanor Battery under PC 243.4(e)," and that she did not spend one day in jail for that offense.

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<sup>1</sup> In fact, the Applicant pled no contest to Inflicting Corporal Injury on a Spouse in violation of section 273.5(a) PC, whereas the charge of Battery/Ex Cohabitant in violation of section 243(e)(1) PC was dismissed.

<sup>2</sup> According to the police incident report, the Applicant struck her live-in boyfriend, D-W-, in the face while they were arguing over his unfaithfulness.

(She appears to be discussing her 2014 arrest). According to the Applicant, she and D-W- got into an argument, and she pushed him in retaliation after he had first pushed her. The Applicant states that D-W- called the police, falsely accused her of hitting him with such force that he had a concussion, and caused her to be arrested. She asserts that she pled guilty to Battery to make the matter go away. The Applicant provides a temporary protection order against D-W- that expired in [ ] 2015, which predates her subsequent arrest in [ ] 2015, as well as evidence that D-W- was in therapy and on medication as evidence that he was the abusive party in their relationship.

First, the Applicant's statement does not show that she has accepted responsibility for her 2014 arrest, as she instead claims to have been the true victim of D-W-'s lies and to have pled no contest for convenience. In addition, the Applicant's criminal history record is more extensive than the single "brush" that she discusses on appeal. The Applicant was arrested for misdemeanor traffic offenses in 2005 and ultimately convicted of driving without a license. She also was charged with Battery on Ex/Cohabitant in [ ] 2015. Finally, even after her Form I-485U was denied and prior to her filing this appeal, the Applicant was charged with multiple drug-related offenses in [ ] 2020. Consequently, on appeal the Applicant mischaracterizes her criminal history and the extent and ongoing nature of her contact with law enforcement. As a consequence, her statement does not reflect remorse for, or acknowledgment of, her full criminal history record.

The Applicant maintains on appeal that that she has submitted all available evidence because she was unable to obtain the arresting officer's report for the 2014 arrest. The Applicant claims that she sent a courier to obtain the arrest report but "[t]he criminal file did not have the arresting officer's report;" however, there is no document from the [ ] Sheriff's office to support her claim that they do not have the 2014 arrest report. Moreover, the Director's RFE at page 2 specifically requested that she provide arrest reports and criminal complaints for *all* of her offenses, not just for the 2014 arrest. She has not provided the arresting officer's reports or the criminal complaints for her other offenses, nor has she provided evidence from the [ ] Sheriff's office or the relevant courts showing that this evidence is unavailable. The Applicant also claims that she should not be penalized for her earlier failure to provide a personal statement regarding her criminal history because the Director did not request it in the RFE. However, the Director's RFE on page 3, No. 5, requested that the Applicant provide a personal statement, in her own words, describing the circumstances and behavior that resulted in each arrest or citation. Instead, the Applicant resubmits a 2019 declaration in which she discusses only her 2014 offense.

In addition, the Applicant asserts that she has an approved Form I-192 waiver that gives her coverage for all issues of inadmissibility. We acknowledge that in 2013, U.S. Citizenship and Immigration Services (USCIS) previously approved a Form I-192 waiver in granting her U nonimmigrant status and we afford positive weight to that decision. However, the waiver was sought solely in order to allow the Applicant to seek U nonimmigrant status, as she claimed on the form that she had no criminal history record.<sup>3</sup> Moreover, a U adjustment application is a separate adjudication and USCIS is not

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<sup>3</sup> The Applicant wrote "no" in response to the question on the waiver application asking if she had ever been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding minor traffic violations. Her answer appears to be false as her criminal history record shows that she was arrested in [ ] California in [ ] 2009 for driving without a license a violation of section 12500 VC. Based on the sentence of two

bound by its prior determination on a waiver application. The Applicant's waiver does not provide prospective coverage for future crimes. In this case, the Applicant's waiver was granted in 2014, and since that date, she was convicted of a crime of domestic violence in 2014 and most recently charged with drug-related offenses in 2020.

### C. A Favorable Exercise of Discretion is Not Warranted

The Applicant bears the burden of establishing that she merits a favorable exercise of discretion. 8 C.F.R. § 245.45(d)(11).

We have considered the favorable factors in this case as outlined by the Director and discussed previously in this decision, including her business-related documents showing she owns and runs a business, tax returns showing that she is the head of household for her family, evidence showing she passed a general educational development examination, her attainment of several skills certificates and an associate's degree at her community college, and a grant deed showing that she has acquired personal property. We have also considered the preservation of the Applicant's family unity and the fact that she has two U.S. citizen children as positive discretionary factors.

With respect to the remainder of the record in this case, including as supplemented on appeal, the positive and mitigating factors do not outweigh the adverse factors in the Applicant's case. The Applicant's primary adverse factor is her criminal history, including at least one conviction which involved domestic violence. Her criminal history record spans the period beginning in 2009 until at least [REDACTED] 2020, when she was charged with multiple drug-related offenses even as she sought to have the denial of her Form I-485U reconsidered on motion.

In considering an Applicant's criminal record in the exercise of discretion, we consider multiple factors including the "nature, recency, and seriousness" of the crimes. *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978). Because the Applicant did not provide all requested evidence regarding her criminal history record in response to the RFE, on motions to the Director, or on appeal, it is not possible to conclude that all adverse factors relating to her criminal history have been weighed against other positive factors. Nevertheless, based on her known criminal record, which is varied, lengthy, and as recent as her drug-related arrest in [REDACTED] 2020, the Applicant has not shown that she merits a favorable exercise of discretion.

First, she has not taken responsibility or expressed remorse for even the charge to which she pled no contest and was convicted. Specifically, the Applicant stated that she was arrested and charged with Domestic Battery against D-W-, her partner at the time, and claims on appeal that she pled no contest because she "simply wanted the matter to go away." On appeal, the Applicant further contends that she should not have to express remorse or show her rehabilitation because, she contends, she was innocent of the battery offense. Consequently, her claim to have been the true victim of a crime to which she voluntarily pled no contest does not support a finding that the Applicant has experienced genuine rehabilitation through acceptance of responsibility and expression of remorse.

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days in jail, this offense appears to have been a misdemeanor conviction rather than an infraction, and therefore should have been disclosed.

While the Applicant contends that she is not inadmissible based on her criminal history record and that her conviction was not a violent crime, there is no prohibition that prevents such arrests and convictions from being considered when adjudicating a discretionary immigration benefit. *See* 18 U.S.C. § 3607(a); 8 C.F.R. § 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination and that it “will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of” certain classes of crimes, including a serious violent crime, and multiple drug-related crimes). Consequently, we find no error with the Director’s determination to give significant weight to the Applicant’s criminal history, not simply her conviction record.

An applicant for discretionary relief with a criminal record must also ordinarily present evidence of genuine rehabilitation. *See Matter of Roberts*, 20 I&N Dec. 294, 298 (BIA 1991). Rehabilitation includes the extent to which an applicant has accepted responsibility and expressed remorse for his or her actions. *See Matter of Marin*, 16 I&N Dec. at 585; *Matter of Mendez-Morales*, 21 I&N Dec. 296, 304-5 (BIA 1996). In this case, the Applicant submitted a statement in her own words addressing only some of her criminal history, *i.e.*, the 2015 conviction, and denied responsibility for even this domestic violence conviction.

Finally, with respect to the Director’s reference on motion to the Applicant’s most recent arrest for multiple drug-related offenses in [ ] 2020, the Applicant claims on appeal that she will submit evidence to show that she was not convicted of the drug-related offenses. However, as of the date of this decision, the Applicant has not submitted documentation showing the disposition for the 2020 arrest, nor has she submitted a detailed statement discussing the circumstances of this additional arrest. Regardless, in the absence of a full criminal history record and a detailed statement from the Applicant regarding her complete criminal history, not just her 2014 offense, her brief and the previously provided evidence that she resubmits on appeal are insufficient to establish her remorse and rehabilitation. She has not provided evidence to overcome the significant weight given to her varied, lengthy, and recent criminal history and, therefore, she has not demonstrated that she merits a favorable exercise of discretion to adjust her status.

### III. CONCLUSION

The Applicant has not demonstrated that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted. Accordingly, the Applicant is ineligible to adjust her status to that of LPR under section 245(m) of the Act.

**ORDER:** The appeal is dismissed.