



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

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

In Re: 17460815

Date: FEB. 22, 2022

Appeal of Nebraska Service Center 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” nonimmigrant status as a victim of qualifying criminal activity. The Nebraska Service Center Director denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The matter is now before us on appeal. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *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. The Applicant’s burden includes establishing that discretion should be exercised in their favor. When making its discretionary determination, USCIS may take into account all relevant factors present in a case. 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 the presence of favorable ones. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970). Favorable factors include, but are not limited to, family unity, length of residence and employment in the United States while in a lawful status, 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 determinations). However, where adverse factors are present, the applicant should 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 native and citizen of Mexico who entered the United States without inspection, admission, or parole in 1996. USCIS granted the Applicant U nonimmigrant status from October of 2015 to September of 2019 as a victim of felonious assault who was helpful in the investigation of the crime. The Applicant timely filed the U adjustment application. The Director denied the U adjustment application, determining that the Applicant had not demonstrated that his adjustment of status to an LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest because he was arrested several times while he held U nonimmigrant status, which outweighed the positive factors in the case. The Applicant has not overcome this determination on appeal.

A. Positive and Mitigating Equities

Within the Director's decision, they considered the Applicant's lengthy residence in the United States as a positive factor. On appeal, the Applicant also identifies his efforts at rehabilitation, his standing in his community, hardship to himself and his family—to include his mother and siblings who are LPRs in the United States—his lawful employment and payment of taxes in the country, and poor conditions and a lack of family in his home country as the positive or mitigating factors.

B. Adverse Factors

The Applicant's primary adverse factors relate to his arrests and resulting convictions during the period when he held U nonimmigrant status. Of the most concern to the Director were those involving drug related charges. In considering an applicant's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offenses. *E.g.*, *Matter of C-V-T-*, 22 I&N Dec. 7, 11 (BIA 1998) (citing *Matter of Marin*, 16 I&N Dec. 581, 584–85 (BIA 1978)). Drug related arrests while holding U status are relevant within our consideration of the recency of the Applicant's offenses. *Id.* In this case, a review of the record indicates the following arrests and convictions while the Applicant held U nonimmigrant status:

- [REDACTED] 2015: according to certified court dispositions, the Applicant pled guilty to possession or consumption of marijuana by an underaged person, and permitting an unauthorized person to drive a motor vehicle;
- [REDACTED] 2016: according to the Applicant, he received a driving infraction of permitting an unauthorized person to drive a motor vehicle and he was found guilty;
- [REDACTED] 2017: according to the Applicant's electronic fingerprint results, he was guilty of permitting an unauthorized person to drive a motor vehicle and of speeding 10–19 miles over the speed limit; and
- [REDACTED] 2019: according to the Applicant's electronic fingerprint results, he was guilty of possession with an intent to distribute a Schedule I or II controlled substance for which he was sentenced to 3 years of probation, 15 days of incarceration, and 72 hours of community service.¹

¹ Although the Applicant provided some court documentation relating to his arrest in [REDACTED] 2019, he did not offer the final court dispositions that fully establishes the outcome of this arrest. Based on the electronic fingerprint records, it

C. Favorable Exercise of Discretion is Not Warranted

The Applicant bears the burden of establishing that they merit 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. Within their decision, the Director only acknowledged the Applicant's lengthy residence in the United States as a positive factor. On appeal, the Applicant claims that the Director erred by not also considering his rehabilitation, standing in his community, hardship to himself and his family, his close family ties in the United States, his lawful employment and payment of taxes in the country, and poor conditions and a lack of family in his home country as the positive or mitigating factors.

Even considering the Applicant's additional positive factors, he still has not demonstrated that they sufficiently counterbalance the adverse effect that his most recent arrest and conviction for a controlled substance has on his eligibility. This offense was recent while he held U nonimmigrant status and was a serious offense. The Applicant does not offer a discussion of the facts surrounding this incident on appeal. As noted above, USCIS will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of particular serious crimes. 8 C.F.R. § 245.24(d)(11).

And as it relates to the Applicant's claimed rehabilitation, an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation. *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991); *Matter of Marin*, 16 I&N Dec. 581, 588 (BIA 1978). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which they were required to comply with court-ordered mandates, but also after their successful completion of them. See *U.S. v. Knights*, 534 U.S. 112, 120 (2001) (quoting *Griffin v. Wisconsin*, 483 U.S. 868, 880 (1987) in recognition 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"). Further, "it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy 'the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions.'" *Griffin*, 483 U.S. at 874 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480 (1972)).

Here, when the Applicant filed this appeal in February of 2021 he was on probation, he appears to remain on probation until [redacted] 2022 or later, and he has not submitted documentation to show that his criminal proceedings have been completed. The fact that the Applicant has not demonstrated that he successfully completed probation also prevents us from assessing his behavior after the completion of his sentence and precludes us from fully evaluating whether or not he has rehabilitated. As part of rehabilitation, we also consider the extent to which an applicant has accepted responsibility and expressed remorse for their actions. See *Matter of Mendez*, 21 I&N Dec. 296, 304–05 (BIA 1996).

appears that the Applicant may be inadmissible under section 212(a)(2)(A)(i)(II) for "a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))" That portion of the U.S. Code defines the term "controlled substance" to mean "a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter." 21 U.S.C.A. § 802. In any future filing, the Applicant should be prepared to address whether this inadmissibility ground applies to him.

Because the Applicant has only provided limited discussion of his arrest and conviction for a controlled substance, we are unable to determine whether he has accepted responsibility for his actions and expressed remorse.

To summarize, it is the Applicant's burden to establish that they warrant adjustment of status to that of an LPR as a matter of discretion. The Applicant's family ties and the difficulties and hardships they might experience, his residency in the United States and his character as attested to by his family and friends, while favorable, are not sufficient to establish that his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the seriousness and the recency of his convictions and the possible continued pendency of the criminal proceedings against him. Consequently, the Applicant has not demonstrated that he merits a favorable exercise of discretion to adjust his status.

III. CONCLUSION

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 a favorable exercise of discretion is warranted. Accordingly, the Applicant is ineligible to adjust his status to that of LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.