U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17840356

Date: February 25, 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) based on his "U" nonimmigrant status as a victim of qualifying criminal activity under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. 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 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, a native and citizen of Mexico, was granted U-1 nonimmigrant status from November 2013 until November 2017. He timely filed his U adjustment application in November 2017. The Director denied the application, and subsequent motion to reopen and reconsider, determining that the Applicant had not demonstrated that his adjustment of status to that of an LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. The Director explained that the Applicant's criminal history, including an [redacted] 2017 arrest and conviction for Malicious Mischief in the Third Degree- Domestic Violence, and failure to provide certain requested documentation of such history, outweighed the positive factors in his case.[1] The Applicant has not overcome this determination on appeal.

A. Positive and Mitigating Equities

The Applicant has lived in the United States since 2002, when he was nine years old. The record shows that the Applicant has experienced multiple, challenging family circumstances. At a young age, the Applicant was mistreated by family in Mexico, leading to his reunification with his father and stepmother in the United States. Subsequently, the Applicant's father was deported from the United States after he pleaded guilty to molesting the Applicant's stepsister. In 2008, the Applicant witnessed the death of his stepbrother from multiple gunshot wounds, which formed the basis of Applicant's Form I-918, Petition for U Nonimmigrant Status. In 2012, the Applicant's stepmother died from illness. In his written statements, the Applicant explained that he has no connections to his family in Mexico.

The Applicant also provided evidence of family ties in the United States that include his U.S. citizen spouse, who he married in [redacted] 2020, three U.S. citizen children, and multiple siblings. The record reflects that the Applicant has maintained steady employment, paid taxes, and is the primary breadwinner for his family. The Applicant provided numerous supporting letters from his spouse, family, and community members describing him as dedicated to family, hardworking, and someone who has overcome a great deal of adversity.

B. Adverse Factors

The Applicant's primary adverse factor is his criminal history and failure to provide arrest reports and other related documentation. In March 2019, the Director issued a request for evidence (RFE) seeking, for each arrest, the arresting officer's report, criminal complaint or charging document, evidence of completion of sentence, and statement in the Applicant's own words describing the circumstances that resulted in the arrest. The record reflects that the Applicant, through counsel, refused to provide the arrest reports, among other evidence. The following summary is based on the present record.

In 2008, the Applicant was arrested as a juvenile for Malicious Mischief. The Applicant explained before the Director that he entered a diversion program for juveniles at the Juvenile Detention Center

[1] In the initial decision denying the U adjustment application, the Director also determined that the record lacked a valid Form I-693, Report of Medical Examination and Vaccination Record. The record reflects that with the motion to reopen and reconsider, the Applicant provided a Form I-693 signed by the civil surgeon in April 2020.

in [redacted] Washington and the charges were dismissed. The Applicant did not provide further documentation regarding this arrest.

In [redacted] 2011, the Applicant was arrested and charged in [redacted] Washington with Manufacture a Controlled Substance, Marijuana, in violation of section 69.50.401(1) of the Revised Code of Washington (Wash. Rev. Code), a Class C Felony. In his written statements below, the Applicant stated that while he was visiting his sister at her boyfriend's house, the police came looking for someone, and that even though he told the police he didn't live there, they "found some equipment" in the basement and arrested him. The record indicates that the criminal charges were dismissed without prejudice in 2012 due to insufficient evidence. On appeal, in an updated written statement, the Applicant reiterates his denial of any involvement in the production or growing of marijuana or any other drug.

The Applicant filed his U adjustment application in November 2017. With the application, he stated that the 2008 and 2011 arrests were his only arrests and that since being granted U-1 nonimmigrant status in November 2013, he had not had any contact with the police or immigration. However, the record reflects that the Applicant was arrested in [redacted] 2017 in [redacted] Washington for Malicious Mischief, Third Degree- Domestic Violence, a gross misdemeanor, in violation of section 9A.48.090 of the Rev. Code Wash. In a 2019 written statement in response to the Director's RFE, the Applicant stated that he regretted what had happened but did not provide details about the underlying incident. In a 2020 statement before the Director with his motion to reopen and reconsider, the Applicant stated that he "let [his] anger get the best of [him], and. . . punched [his] car window and it broke." The Applicant explained that "[s]ince the car was in [his] wife's name, [he] was charged with DV." The Applicant's spouse provided a similar statement, explaining that a "heated argument" had "escalated very quickly and unnecessar[il]y."

With the motion to reopen and reconsider, the Applicant also provided the [redacted] 2017 *Supplemental Complaint* (complaint) from the [redacted] Washington Municipal Court. According to the complaint, the Applicant was charged with "knowingly and maliciously caus[ing] physical damage to the property of [his girlfriend] by breaking a chair and by throwing a car seat against her car window, causing it to break." The record reflects that the Applicant attended anger management classes beginning in October 2017, and that he received a certificate of completion in March 2018. In [redacted] 2019, he was found guilty and convicted of Malicious Mischief, Third degree- Domestic Violence, in violation of section 9A.48.090 of the Wash. Rev. Code. The *Judgment and Sentence* (judgment) states that domestic violence was "pled and proved" related to this charge. The record indicates that in [redacted] 2019, the Applicant received a 60-month sentence and 364 days of jail time, both suspended, and was ordered to pay fines.

On appeal, in an updated written statement, the Applicant explains that on the morning of the arrest, he was upset with his wife and punched out his car window after she did not come home from being out with friends the night before, due to a communication breakdown. The Applicant states that they were not yet married, and his low self-esteem made him think that she could cheat or leave him. The Applicant states that when the police came, he had blood on his hands and admitted to punching the window. He states that he is not proud of his conduct and that even though he and his wife have worked through it, the experience is still embarrassing to him.

C. A Favorable Exercise of Discretion is Not Warranted on Humanitarian Grounds, to Ensure Family Unity, or Otherwise in the Public Interest

The Applicant bears the burden of establishing that he 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). On appeal, the Applicant claims he has satisfied his burden because he has many positive equities and the Director placed undue weight on his criminal history. Upon *de novo* review of the record, as supplemented on appeal, the Applicant has not made such a showing.

As an initial matter, we have considered the positive factors in this case. We acknowledge the Applicant's family ties and role as primary breadwinner, lengthy residence in the United States, and difficult family circumstances that include witnessing the murder of his brother. The record reflects that the Applicant has maintained employment and paid taxes, and supporting letters describe his hard work, dedication to his family, and perseverance. However, as discussed below, these factors remain outweighed by the Applicant's criminal history and failure to provide sufficient documentation of such history.

On appeal, the Applicant first asserts that the most recent crime of which he was convicted, Malicious Mischief, Third Degree- Domestic Violence, is not serious as no one was harmed and the crime is not severe enough to make any person inadmissible or deportable under section 212 or 237 of the Act. He contends that his sentence was minimal as the jail time was suspended, he was given a nominal fee to pay, and he was not even ordered to have no contact with his wife, even though the case was tagged as domestic violence.

Although we acknowledge this claim, we consider the Applicant's arrest and conviction for Malicious Mischief, Third Degree- Domestic Violence, which occurred just prior to his submission of the instant U adjustment application, to be both recent and serious. *See Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978) (explaining that 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). It is of particular concern that the crime of which he was convicted involves domestic violence, as the U nonimmigrant program was created, in large part, to protect victims of domestic violence. *See* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007) ("In passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence . . . while offering protection to victims of such crimes."). Regarding his claim about the immigration consequences related to this offense, we note that U adjustment applicants are not required to establish their admissibility and that applicable regulations enable us to consider all relevant factors in making our discretionary determination. 8 C.F.R. § 245.24(b)(6), (d)(11). The record also does not reflect that the Applicant's sentence is minimal, as it indicates that his criminal proceedings are ongoing and that he will remain under the 60-month suspended sentence until [redacted] 2024.

Moreover, regardless of whether the Applicant was ordered to have no contact with his wife, it is concerning that the record contains unresolved discrepancies regarding the circumstances that led to his arrest. Although the Applicant and his wife, in their written statements, claimed that the Applicant became angry and punched the car window, causing it to break, the complaint alleges that the

Applicant broke a chair and threw a car seat at the car window. In addition, the Applicant's claim that he was "charged with [domestic violence]" because the vehicle was in his wife's name is not corroborated by other evidence in the record, especially as the judgment states that domestic violence was "pled and proved."

Given these discrepancies, it is notable that the Applicant has still not provided a critical piece of evidence—the arresting officer's report—despite the Director requesting it and emphasizing its importance. On appeal, the Applicant asserts that requiring him to provide police reports contradicts USCIS policy, as he provided the other requested documentation about this offense. However, the Director correctly emphasized the importance of this evidence, as it is "especially appropriate" to consider the factual information contained in police reports in exercising our discretion, where all relevant factors concerning an arrest and conviction should be taken into account. *Matter of Grijalva*, 19 I&N Dec. 713, 722 (1988). Here, due to the Applicant's refusal to provide the arrest report, we are unable to fully understand the circumstances that resulted in his arrest and determine the risk he poses to public safety. This factor is significant because it is the Applicant's burden to establish that he warrants a favorable exercise of discretion. *See* section 291 of the Act; 8 C.F.R. §§ 245.24(b)(6), (d)(11).

The record also suggests that the Applicant has not been entirely forthcoming with USCIS, which is important because 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. at 588. In addition to not providing the requested arrest reports, the Applicant did not initially disclose his [redacted] 2017 arrest when he filed his U adjustment application in November 2017. The Applicant's statements below and on appeal also do not indicate that he has accepted responsibility for his actions. Although the Applicant states on appeal that he "is not proud of his conduct" and that the experience is "still embarrassing" to him, and he stated below that he regretted his actions, he has still not acknowledged the seriousness of his actions or any wrongdoing on his part. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 304-5 (BIA 1996) (explaining that evidence of rehabilitation also includes the extent to which an applicant has accepted responsibility and expressed remorse for their actions).

Regarding the Applicant's 2008 arrest for Malicious Mischief, the Applicant claims that the incident should be given minimal weight because it occurred when he was a juvenile and not long after the death of his brother. Although an adjudication of youthful offender status or juvenile delinquency is not a criminal conviction under the immigration laws, *Matter of Devison-Charles,* 22 I&N Dec. 1362, 1373 (BIA 2000), as previously stated, all relevant factors are considered in assessing an applicant's eligibility for adjustment of status as matter of discretion. 8 C.F.R § 245.24(d)(11); *see also Castro-Saravia v. Ashcroft*, 122 Fed. Appx. 303, 304-05 (9th Cir. 2004) (concluding that *Matter of Devison-Charles* does not preclude consideration of juvenile delinquency when making a discretionary determination). The Applicant further contends that his 2011 arrest should not be afforded negative discretionary weight as the charges were dismissed due to insufficient evidence. The record reflects that the Director did not afford significant weight to either of these arrests, but correctly emphasized the Applicant's failure to provide the requested documentation, especially the arresting officer's reports. As the Applicant has still not provided this evidence on appeal, we find no error in the Director's determination.

Under these circumstances, 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 he warrants a positive exercise of our discretion to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.