



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 18073373

Date: FEBRUARY 28, 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 his “U” nonimmigrant status. 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. 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, we will remand the matter to the Director for further proceedings.

I. LAW

Section 245(m) of the Act contains the eligibility requirements for individuals seeking to adjust status to that of an LPR based on having been granted U nonimmigrant status. In addition, an applicant for adjustment of status is required to submit a certified copy of their birth certificate or secondary evidence that meets the requirements of 8 C.F.R. § 103.2(b)(2). See also 8 C.F.R. § 103.2(a)(1) (explaining that every benefit request submitted to U.S. Citizenship and Immigration Services (USCIS) must be executed and filed in accordance with the form’s instructions, which are incorporated into the regulations requiring its submission); Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status (Mar. 29, 2021 ed.), at 9 (Form I-485 Instructions) (requiring all applicants for adjustment of status to submit a copy of their birth certificate issued by the appropriate civil authority, or proof of its unavailability or nonexistence and acceptable alternative evidence of birth). The applicant bears the burden of establishing eligibility and must do so by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

A favorable exercise of discretion to grant an applicant adjustment of status to that of 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 1 USCIS Policy Manual E.8(C)(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) (stating 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 Honduras, was granted U nonimmigrant status from December 2013 until December 2017. In 2017, he filed a Form I-539, Application to Extend/Change Nonimmigrant Status and his U nonimmigrant status was extended from December 2017 to December 2019, and he timely filed the instant U adjustment application in September 2019.

Through a request for evidence (RFE), the Director noted that the Applicant did not submit initial required evidence including a legible copy of his passport issued in May 2013, and a certified copy of a valid Honduran birth certificate, along with an English translation, which for immigrant visa purposes, is the Copia de Folio del Libro de Nacimientos issued and certified by the Registro Nacional de las Personas (RNP). In response to the RFE, the Applicant provided additional evidence including a legible copy of his passport and a copy of a Certificación Literal de Acta de Nacimiento and a Certificación de Expediente de Visa. After review, the Director denied the application, concluding that USCIS could not reach a favorable decision on the Applicant’s U adjustment application because his RFE response did not include the required birth certificate from Honduras. In addition, the Director noted that the instructions for the Form I-485 provide that applicants must submit certified police and court records for any criminal charges, arrests, or convictions, and the Applicant did not submit the final disposition relating to his [REDACTED] 2019 arrest for driving under the influence of alcohol, operating with learner’s permit, and failure to maintain improper lane change.

On appeal, the Applicant provides a copy of the required birth certificate issued and certified by the RNP, a certificate of authenticity issued by the RNP, English translations of the aforementioned documents, and a certified disposition of his 2019 arrest.

The record, as supplemented on appeal, includes additional evidence material to the issues that informed the Director’s determination. Accordingly, we will remand the matter to the Director to consider this evidence in the first instance and determine if the Applicant has established the remaining eligibility requirements for adjustment under section 245(m) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded to the Director for issuance of a new decision consistent with the foregoing analysis.