



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

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

In Re: 17248008

Date: FEB. 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) based on his “U” nonimmigrant status as a qualifying family member of 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 Alien in U Nonimmigrant Status (U adjustment application)) because 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 concluded that the Applicant’s known criminal history and her lack of evidence to support her claim of rehabilitation were negative factors outweighing her mitigating factors such 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 such that she warranted a positive exercise of discretion to adjust her status to that of an LPR. 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. Applicants bear 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

A. Procedural History

The Applicant, a native and citizen of Mexico, entered the United States without inspection, admission, or parole in 2007, when he was approximately ten years of age. In November 2015, the Applicant was granted U-2 status based on his mother’s victimization and assistance to law enforcement. The Applicant timely filed the instant U adjustment application in September 2019.

The Applicant’s initial record reflects the following offenses in California:

1. In [] 2015, the Applicant was arrested by the [] sheriff’s office for controlled substance paraphernalia.
2. In [] 2016, the Applicant was arrested by the [] sheriff’s office for controlled substance paraphernalia.
3. On [] 2016, the Applicant was arrested by the [] sheriff’s office for vehicle theft, attempted stolen property, and false identification to specific peace officers. In [] 2016, he was convicted of driving or taking a vehicle without the owner’s consent in violation of California Penal Code (Cal. Vehicle Code) section 10851(a), and false identification to specific peace officers in violation of California Penal Code (Cal. Penal Code) section 148.9, both misdemeanors. He was committed to the sheriff’s office for 180 days confinement; however, imposition of sentence was suspended and the Applicant was placed on probation for three years. In [] 2017, the Applicant was arrested by the [] sheriff’s office on a related warrant. In [] 2017, he admitted to a violation of probation in the Superior Court of California, [] and was released to serve the remainder of his custody through furlough.

In his written statement in support of the Form I-485U filing, the Applicant did not specifically discuss the offenses for which he was arrested and convicted, instead claiming that he was arrested by the police, placed on probation, completed probation, and has not been arrested since. With respect to the circumstances surrounding his conviction, the Applicant claimed that he had been unable to find employment at that time and did not know what to do because he and his mother were hungry. The Applicant stated that he regretted what happened and understands that it was the wrong decision. He also indicated that he now understands not to make a rush decision and that he needs to seek assistance if he needs help instead of doing things the wrong way.

In a request for evidence (RFE), the Director asked that the Applicant provide, for each of the above offenses: (1) the actual arresting officer's report or citation; (2) the criminal complaint or charging document from the prosecuting attorney's office; (3) the certified judgment and conviction documents from the court showing the final disposition, including dismissed charges, reduced charges, and pending charges; (4) evidence of completion of each sentence or an explanation of what needs to be completed; and (5) confirmation of unavailability of any of the evidence from the relevant arresting entity or court and not solely the Applicant's claim that such evidence is unavailable. In addition, the Director requested that the Applicant provide a personal statement describing the circumstances and behavior that resulted in each of the Applicant's arrests or citations.

In response to the RFE, the Applicant resubmitted his previously-provided personal statement. He also provided, among other documents, court records showing that in [] 2016, a charge of unlawful possession of drug paraphernalia in violation of California Health and Safety Code section 11364 was dismissed in the Superior Court of California, []. Finally, he included evidence that as of [] 2019, he was no longer on formal probation with the [] probation department.

The Director denied the Form I-485U, 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 cited to adverse factors, including her conclusions that the Applicant's criminal history included dangerous behavior while in U nonimmigrant status. The Director also stated that the Applicant's recent and repetitive encounters with law enforcement show a concerning pattern of unlawful behavior that is an additional adverse factor, and that his conviction was too recent to allow the Applicant to establish a successful completion of reform efforts, a substantial negative factor. The Director stated that the circumstances of the Applicant's arrests remain unclear because he had not provided certain requested documentation, including a personal statement describing the circumstances and his own behavior that resulted in each arrest. As a consequence, the Director concluded that she could not weigh any additional mitigating factors.

On appeal, the Applicant provides a new personal statement confirming that he was arrested on four occasions. He asserts that he had not been able to obtain the arrest records for his offenses, but that the two arrests for unlawful possession of drug paraphernalia were dismissed, that the other two arrests were related to a single conviction and that he therefore has only one conviction for which he generally claims regret. He does not provide a detailed discussion of the circumstances regarding the arrest and his behavior, instead claiming that he was young, that he and his mother were hungry and he did not know what to do, and that he made a mistake.

B. Positive and Mitigating Equities

In the record before the Director, the Applicant provided evidence of his family ties in the United States through his mother, the U-1 principal. The Applicant included documentation that his mother is physically unwell as she has heart failure and diabetes, and that he therefore provides her with financial as well as emotional support in the United States. The Applicant is described in supporting letters from family friends as responsible, honest, and a good son who provides great economic support to his mother. The record also reflects that the Applicant earned his high school diploma, that he has

maintained employment in the United States for several years, filed his 2018 federal income tax return, and that his present employer considers him to be loyal, hardworking, and reliably on-time to work.

C. Adverse Factors

The Applicant's primary adverse factor is his criminal history, particularly his failure to provide arrest reports in response to the Director specific request and to fully address his criminal history record in his statements.

On appeal, he claims that he made every effort to obtain his arrest reports but was unsuccessful and therefore submitted the records that he was able to obtain from the Superior Court in [REDACTED] California. He submits a new statement on appeal in which he discusses, among other things, his criminal history and confirms that he was arrested four times, that he was very young when they happened, and that he regrets those mistakes. He further claims that the two cases in which he was charged for unlawful possession of drug paraphernalia were dismissed at the request of the prosecutor, and that his other two arrests are related in that one was a warrant related to his term of probation, that he was able to resolve it. The Applicant affirms that he has successfully completed probation, has had no further arrests, and that he has remained employed. However, he did not discuss the circumstances surrounding his arrest or provide other details, such as an explanation as to how his conviction related to his living situation with this mother and their lack of food and employment at the time.

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

On appeal, the Applicant points to the previously submitted records from the Superior Court in [REDACTED] as evidence that he has provided all available evidence. The Applicant contends that the Director has misinterpreted his criminal history record in that he has only one misdemeanor conviction. The Applicant also claims that because he completed his three-year period of probation and his arrests occurred four or more years ago, he has demonstrated his rehabilitation and his record can no longer be considered recent.

In this case, the record before the Director showed that the Applicant had been arrested as recently as [REDACTED] 2017, and that he filed the Form I-485U adjustment application approximately 18 months later in September 2019. Moreover, three of the Applicant's four arrests were after he had been granted U-2 nonimmigrant status and he had only completed probation in [REDACTED] 2019 when he filed the instant Form I-485U in September 2019. As such, the Director properly concluded that the Applicant's criminal history record was recent. *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). Regardless, the question before us is whether the Applicant warrants a favorable exercise of discretion based on the totality of the evidence. As such, we are permitted to consider how the Applicant's previous arrests, violations, and convictions, as well as the lack of such evidence, affect the determination of whether his adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

In the present case, we acknowledge that evidence in the record shows that several of the charges against the Applicant were dismissed. Although we do not give substantial weight to arrests absent convictions or other corroborating evidence of the allegations, we may properly consider them in our exercise of discretion. *See Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing *Matter of Grijalva*, 19 I&N Dec. 713 (BIA 1988) and *Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995) (finding that we may look to police records and arrests in making a determination as to whether discretion should be exercised)); *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995) (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports). Moreover, even though certain charges against the Applicant were ultimately dismissed, the fact that he was not convicted of the charges does not preclude consideration of the underlying behavior leading to those charges. *See* 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). In addition, depending on the nature of an underlying offense, an individual may be inadmissible under section 212(a)(2)(A)(i)(II) of the Act for certain drug-related offenses, even without an arrest or conviction. Consequently, we find no error in the Director's decision to afford adverse weight to the Applicant's arrests and charges, even if the record does not show that they led to convictions.

In addition, as the Director accurately noted, due to the lack of requested arrest reports or other similar documentation, the circumstances surrounding the Applicant's arrests remains unclear. Reliance on an arrest report in adjudicating discretionary relief, even in the absence of a criminal conviction, is permissible provided that the report is inherently reliable and its use is not fundamentally unfair. *See e.g., Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) (“[T]he admission into the record of . . . information contained in the police reports is especially appropriate in cases involving discretionary relief . . . , where all relevant factors . . . should be considered to determine whether an [applicant] warrants a favorable exercise of discretion.”).

Although he claims he was unable to obtain arrest reports or complaints, the Applicant has not provided evidence from the relevant authorities confirming the non-existence of those records, despite the very specific instructions in the Director's RFE. Moreover, the Applicant's personal statements, below and on appeal, discuss his arrests in a very general way such he has not described his role and behavior leading up to the arrests with any detail or specificity. Absent the requested corroborating evidence in the form of arrest reports (or evidence from the relevant law enforcement authorities confirming that this documentation is unavailable), as well as a detailed personal statement addressing the circumstances of *all* of his arrests and behavior leading to the arrests, we are unable to consider the actual criminal actions that the Applicant may have taken and assess them against his personal statements in order to determine what may have occurred during these incidents, the extent to which the Applicant has been forthcoming with USCIS, and whether he has accepted responsibility for his actions.

In the end, we acknowledge and consider the Applicant's positive and mitigating equities as reflected in the record. However, in the absence of additional information or documentation which would allow us to properly and fully consider the basis for and specific facts surrounding the Applicant's arrests, such as the underlying arrest reports and a personal statement fully addressing his criminal history record, the Applicant has not established that his arrests and the charges against him should not be

considered as adverse factors in his case or, alternatively, that lesser weight should be accorded to such evidence. As a consequence, the adverse factors in the case continue to outweigh the favorable and mitigating equities.

III. CONCLUSION

The Applicant has not established that his adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, he has not demonstrated that he is eligible to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.