U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23608398

Date: JULY 21, 2022

Appeal of Vermont 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. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application), concluding that the positive equities do not outweigh the negative factors in the case. The matter is now before us on appeal. Upon *de novo* review, as explained below, 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; *see also* 8 C.F.R. § 245.24(b)(6). The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *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(d)(11).

A favorable exercise of discretion to grant an adjustment application 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 may 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, applicants should submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.24(d)(11) ("[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 was granted U nonimmigrant status in November of 2016. He filed the instant adjustment application in March of 2020 with an affidavit apologizing "for breaking the law and entering the United States illegally and for all my driving violations and DWIS," attesting that he was "going to classes for the DWIs . . . ." He submitted, among other things, a three-page "Criminal/Traffic/Petty Case Records Search Results" printout and court documents.

The Director issued a request for evidence (RFE), indicating that a fingerprint analysis revealed the Applicant had been convicted of driving while impaired under the influence of alcohol (DWI) in 2015 and again in 2017. The Director noted that the Applicant remained on probation for his 2017 offense. The Director sought, in part, additional documents regarding all of the Applicant's arrests and/or citations, a statement in the Applicant's own words describing the circumstances of each arrest or citation, and evidence to show whether a favorable exercise of discretion was appropriate. The Director also requested an updated Form I-693, Report of Medical Examination and Vaccination Record, specifically addressing the Applicant's history of alcohol-related arrests and/or convictions.

In response to the RFE, the Applicant submitted, among other things, two statements, an updated Form I-693 medical record, a letter from the Applicant's daughter and several other letters of support, a copy of the incident report for his 2017 arrest, a copy of an order revoking his driver's license, and a letter from a probation officer stating that probation was scheduled to expire on [redacted] 2022. In his statement, the Applicant described his 2017 arrest. He explained that he had worked for 10 hours, was very tired, had not eaten, and "drank some beers." He stated that he thought he was okay to drive home and got in the car but did not drive very far. He claimed he felt very tired, so he stopped the car and went to sleep. He described waking up when a police officer knocked on the car window. He stated he felt ashamed and should never have gotten into the car. He attested that it has been four years and he has stopped drinking altogether. In a separate statement, the Applicant stated that he has given up drinking irresponsibly and has learned from his mistakes. He asserted that he needs to remain in the United States with his daughter, who suffers from dyslexia, attention deficit disorder, depression, and anxiety.

The Director denied the adjustment application. The Director specified, in part, that the Applicant had been convicted of alcohol-related driving offenses two times in the past seven years and was on probation for most of the time he was in U nonimmigrant status, except for a few months after the first probation period ended in [redacted] 2017 and before the Applicant's subsequent arrest in [redacted] 2017. The Director found that driving under the influence of alcohol poses a safety risk and is contrary to the public interest. In addition, the Director noted that the updated Form I-693 medical record that was submitted in response to the RFE did not address the Applicant's convictions in the appropriate section or attached addendum and did not reflect that the Civil Surgeon who conducted the exam considered the Applicant's arrests. The Director acknowledged the positive factors in the case, including, but not limited to, the Applicant's long residence in the United States after his lawful entry into the country, his U.S. citizen adult daughter, his employment as a small business owner, his support to his family and community, and the psychological impacts of his victimization that was the basis for his U nonimmigrant status. Nonetheless, the Director found that although the Applicant has complied with court-mandated conditions, the record did not sufficiently establish the extent of the Applicant's

rehabilitation or the risk he may pose to public safety. The Director found that the Applicant's recent unlawful behavior and ongoing involvement in probation were substantial adverse factors. The Director concluded that the Applicant had not submitted sufficient evidence to establish that his continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that he warranted a positive exercise of discretion to adjust status to that of an LPR.

On appeal, the Applicant reiterates that he is remorseful for his behavior and takes full responsibility for his actions. He asserts that he has learned his lesson and will not drive drunk again. He states he has completed a 60-hour outpatient treatment program, has abstained from alcohol, and has not had any other incident involving alcohol for the past five years. He contends he has lived in the United States for 20 years and provides his daughter with emotional, psychological, and financial support. He submits new evidence in support of his appeal, including, in part: his signed statement; a Form I-693 medical record; a letter from a probation officer; a mental health evaluation;[1] documentation of the Applicant's completion of a chemical dependency outpatient treatment program; a "Rule 25 Assessment"; documentation addressing the Applicant's daughter's mental health issues; and additional letters of support attesting to the Applicant's good moral character.

Upon a careful review of the entire record, including the new evidence submitted on appeal, we do not find the Applicant has met his burden of establishing that he warrants a positive exercise of discretion. In considering an applicant's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offense(s). *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978). Driving under the influence of alcohol is both a serious crime and a significant adverse factor relevant to our consideration of whether the Applicant warrants a favorable exercise of our discretion. *See Matter of Siniaiskas*, 27 I&N Dec. 207, 207 (BIA 2018) (finding that driving under the influence of alcohol is a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *see also Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (discussing the "reckless and dangerous nature of the crime of DUI"). Moreover, 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 determining 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 evaluate the applicant's conduct after they have satisfied all court-ordered and monitoring requirements. For applicants on probation, the U.S. Supreme Court has recognized that the state has a justified concern that a probationer is "more likely to engage in criminal conduct than an ordinary member of the community." *U.S. v. Knights*, 534 U.S. 112, 121 (2001). Furthermore, when an individual is on probation, they enjoy reduced liberty, as the criminal proceedings remain pending during probation and the Applicant must report periodically to the probation officer and the court. *See Doe v. Harris*, 772 F.3d 563, 571 (9th Cir. 2014); *U.S. v. King*, 736 F.3d 805, 808-09 (9th Cir. 2013).

As the Director found, and the Applicant does not contest, he was convicted of DWI in 2015 and again in 2017 while he was in U nonimmigrant status. Regarding his first conviction, according to the Complaint filed in the [redacted] Judicial District Court, [redacted], Minnesota, in [redacted]

[1] The Applicant's mental health evaluation was based on one interview, is unsigned, and does not include the evaluator's qualifications, address, phone number, or other contact information.

2015, the Applicant was pulled over after an officer observed his vehicle "swerve back and forth across lane lines." The Complaint specified that the Applicant's preliminary breath test showed a blood alcohol concentration of .14, and that he subsequently refused to provide a required second sample; instead, he "only pretended to blow into the machine and would just puff out his cheeks and suck on the mouthpiece instead of blowing into it . . . [which] was deemed a refusal by conduct." The Applicant has not addressed the circumstances surrounding this conviction, despite the Director's specific request in the RFE.

Only five months after he completed his two years of probation in [redacted] 2017, the Applicant was again arrested for DWI in 2017. According to the Complaint in this case, a car was "parked diagonally in the roadway, not parallel to the curb, partly blocking traffic, and [the Applicant was] in the driver's seat passed out." The Complaint specified that the Applicant's blood alcohol concentration was .162 and noted that he had an alcohol-impaired driver's license revocation in [redacted] 2015.

In addition to his two convictions, the record also shows that from 2006 to 2019, the Applicant was cited 19 additional times for traffic violations, including: driving after his driver's license was cancelled (three times in 2006, 2009, 2010, 2011, 2012, 2015); failing to produce proof of insurance (2006); driving without insurance (2009); driving without a valid license (2015); driving with expired registration (2019); and numerous parking violations. The Applicant has not specifically addressed these additional violations.

We consider the Applicant's DWI convictions and his numerous, repeated, and serious other traffic violations to pose a danger to the general public, to show a complete disregard for the laws of the United States, and to be significant adverse factors. Indeed, the new Form I-693 medical record submitted on appeal found the Applicant has a "Class B" condition, namely, "Substance (Drug) Abuse in Full Remission." While the Civil Surgeon indicated the substance abuse to be in remission, the record as a whole does not sufficiently show that the Applicant does not have a physical or mental disorder with associated harmful behavior. Likewise, the Rule 25 Assessment submitted on appeal indicates the Applicant "displays mild to moderate intoxication or signs and symptoms interfering with daily functioning," while stating he is not an immediate danger to himself or others. The assessment further states, among other things, that the Applicant reported he does not feel he has a substance issue, is ambivalent about the need for change, and displays moderate vulnerability for further substance use. Although his probation may have expired [redacted] months ago in [redacted] 2022, and we acknowledge he has completed an outpatient treatment program, nonetheless, considering the record in its entirety and the recency of the completion of probation, we do not find the Applicant to be successfully rehabilitated.

We acknowledge the record contains positive equities. The Applicant is close with his U.S. citizen adult daughter who has mental health issues. He has been a victim of violence and has assisted law enforcement. He started his own business and has paid taxes. The record includes many letters of support, attesting to the Applicant's good moral character. Nonetheless, considering the negative factors in this case as described above, we do not find that the Applicant has shown 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. The application will remain denied.

ORDER: The appeal is dismissed.