U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20434248

Date: MAR. 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 her derivative "U" nonimmigrant status 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), as a matter of discretion, concluding that there was insufficient evidence to show that the positive and mitigating equities outweigh the negative factors in the case. The matter is now before us on appeal. On appeal, the Applicant submits a brief and reasserts her eligibility.

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; *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; 8 C.F.R. § 245.24(b); *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 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* 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) ("[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 Background

The Applicant, a native and citizen of Mexico, was granted U-2 status from October 2014 until September 2018. The Applicant timely filed the instant U adjustment application in August 2018. As indicated previously, the Applicant bears the burden of establishing that she 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).

In denying the U adjustment application, the Director listed the positive factors found in the record and concluded that they were not sufficient to overcome the adverse factors in the record. First, the Director noted the Applicant's citations for speeding violations on 10 separate occasions occurring before and after the grant of her U-2 nonimmigrant status, which despite the reduced charges, the Director found such repetitive unsafe behavior concerning as it poses a risk to the public and reveals a disregard for U.S. laws. Second, the Director addressed the Applicant's cooperation with Homeland Security Investigations (HSI), the investigative component of Immigration and Customs Enforcement (ICE), by voluntarily giving a statement regarding her unauthorized employment at two separate law firms at different times. The Director noted that the Applicant provided information relating to her job duties at both law firms which would be generally associated with a legal assistant, but she did not provide detail regarding any knowledge of the illegal activity for which both firms were being investigated. Third, the Director addressed the request, through the issuance of a Notice of Intent to Deny (NOID), for further clarification regarding the Applicant's alleged abduction in [redacted] 2012, as the information provided in the police report, obtained during the HSI investigation, and her statements were conflicting and did not provide a clear understanding regarding the events. The Director indicated that the Applicant asserted during the police investigation that she was abducted and taken from her office by a masked individual, but F-D-,[1] an individual identified in the police report, indicated that she had requested his help as "she was scared that someone was trying to kill her and just wanted to get away and hide for a little while." The Director also indicated that the brief provided in response to the NOID contended that F-D- reported to the Applicant's counsel that, at the time of the incident in question, he only received birthday wishes from the Applicant and nothing more. The Director further noted that the conflicting information regarding the Applicant's alleged abduction suggested that it was not legitimate and thereby caused a hindrance rather than helpfulness to law enforcement, which conflicts with the purpose of the U visa. The Director concluded that USCIS may take into account all factors, including those involved in a separate investigation, in making its discretionary determination on the application for adjustment of status under § 245(m) of the Act, which includes derogatory information that was in the record at the time the Applicant was granted U nonimmigrant status.

[1] Initials are used to protect the identities of the individuals.

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

Upon consideration of the entire record, including the arguments made on appeal, we adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623, 624 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7–8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

On appeal, the Applicant, through counsel, contends that the Director "attempts to outweigh the positive equities in [her] case with alleged discrepancies, [a] focus on an abduction that has nothing to do with the underlying U visa petition, ill-created negative equities, and an alleged lack of credibility." She submits a new statement in support her assertions. First, the Applicant, through counsel, indicates that she is apologetic for her behavior in relation to the traffic violations and submits an additional traffic citation received in [redacted] 2021. She states that, while she understands that her driving record is a negative factor, she has no other criminal history. Second, the Applicant addresses her unauthorized employment and clarifies that she thought her employers would be responsible as they were aware of her unlawful status. The Applicant's counsel contends that the Applicant's unauthorized employment "should be offset [by] her substantial involvement in the HSI investigation into her employer and ongoing authorized employment, payment of taxes, and commitment to financial obligations since 2015." Fourth, the Applicant specifically addresses the alleged abduction in [redacted] 2012. She states that she "did not want anything from it because all [she] wanted to do is move on with [her] life" and that she coped in a silent manner and did not want to have a reminder of what happened. The Applicant's counsel contends that the Director was attempting to discredit the Applicant by focusing heavily on inconsistencies relating to statements provided by F-D- to police, and specifically notes that "no statement has been provided directly to the Service by [F-D-] himself." Counsel further states that the Director relies on a police report, which has a purported statement from F-D-, and contends that the police report is hearsay without corroboration from F-D-. Finally, the Applicant, through counsel, concludes that the positive factors in this case are overwhelming and outweigh the actual negative equities that exist. The Applicant submits duplicate copies of her responses to the Director's request for evidence (RFE) and NOID on appeal.

While we recognize the Applicant's statements on appeal, they are insufficient to establish that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. In regard to her citations for speeding violations on 10 separate occasions occurring before and after the grant of her U-2 nonimmigrant status, the Applicant continues to demonstrate a blatant disregard for U.S. laws as she has again been cited for speeding in [redacted] 2021, bringing her to a known 11 speeding violations. While the Applicant has not presented any other criminal history, this repetitive unsafe behavior remains a concern as it poses risk to the public, and a disregard for U.S. laws. In regard to her unauthorized employment, she still does not provide detail regarding any knowledge, or lack thereof, of the illegal activity for which both firms she was unlawfully employed by were being investigated by HSI, which was specifically sought in the Director's decision.

In regard to her alleged abduction in [redacted]2012, the Applicant has not provided sufficient evidence to corroborate her claims. On appeal, the Applicant does not specifically address the Director's request for further clarification regarding the conflicting information provided in the police report, F-D-'s police interview, and her statements. The Applicant's counsel merely notes that "no statement has been provided directly to the Service by [F-D-] himself," and contends that the police report is hearsay without his corroboration. However, on appeal, the Applicant has not provided a statement from F-D- outlining his involvement in the alleged abduction and his encounter with police specifically related to it. Further, the Applicant misconstrues the Director's analysis, which centered on unresolved inconsistencies in the record surrounding her alleged abduction in [redacted]2012 and the questions regarding its legitimacy in light of these inconsistencies, and they remain unresolved on appeal. The Applicant bears the burden of establishing her eligibility, including that a favorable exercise of discretion is warranted. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. at 375. Discretionary determinations in U adjustment applications are guided by section 245(m)(1)(B) of the Act and 8 C.F.R. 245.24(d)(11), providing us with the authority to consider all relevant factors in determining whether a favorable exercise of discretion is warranted. Relevant factors include evidence of criminal conduct that has not resulted in a conviction as well as information taken from police reports and similar documents. *See Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995) (holding that evidence of criminal conduct that has not culminated in a final conviction may nonetheless be considered in discretionary determinations); *see also 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.").

Moreover, the Director's decision specifically discussed F-D-'s interview outlined in the police report and the Applicant's brief provided in response to the NOID, which contended that F-D- reported to the Applicant's counsel that he only received birthday wishes from the Applicant and played no role in her alleged abduction. Again, on appeal, the Applicant does not provide any corroborating evidence. The assertions of counsel are not evidence and must be supported by independent documentation. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) ("We note statements or assertions by counsel are not evidence"). The Applicant has not submitted a statement or other relevant evidence on appeal corroborative of her counsel's assertions.

In sum, we acknowledge the record contains positive and mitigating equities. The Applicant has been in the United States since childhood and has family ties in the United States, including U.S. citizen children, for whom she is responsible and who have significant medical needs. She also donates blood regularly, attends church, works at a child advocacy center, and pays taxes. Several letters of support describe her as respectable, caring, hardworking, and a good mother. Nonetheless, in light of the still unresolved inconsistencies presented in the record surrounding her alleged abduction in [redacted]2012 and the remaining negative factors present in the Applicant's case, we agree with the Director that she has not demonstrated that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that she warrants a positive exercise of our discretion to adjust her status to that of an LPR under section 245(m) of the Act. The application will remain denied accordingly.

III. CONCLUSION

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

ORDER: The appeal is dismissed.