U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17163852

Date: MAR. 31, 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 her "U" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a brief and asserts 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. 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 citizen of Mexico, last entered the United States without inspection, admission, or parole in approximately 1990. In [redacted] 2007, the Applicant was the victim of domestic violence, and she assisted law enforcement in the investigation of the offense. In July 2013, the Director approved her U petition on this basis, granting her U status for a period of four years ending in July 2017. The Applicant filed the instant U adjustment application in September 2016 while she was still in U status.

In December 2020, the Director denied the Applicant's U adjustment application. The Director acknowledged the positive and mitigating equities present in the Applicant's case: her lengthy residence in the United States; her family ties in the country, including three U.S. citizen children and several grandchildren; her past victimization of domestic violence by her former spouse; her assistance to law enforcement; and her acknowledgement that her past crime of theft was wrong. The Director determined, however, that the positive and mitigating equities were outweighed by the adverse factor of the Applicant's criminal history, including an arrest and conviction that occurred after she was granted U status. As detailed by the Director, the Applicant was arrested on five separate occasions since 1993 resulting in several convictions, including for burglary, petty theft, infliction of injury on spouse, and conspiracy to commit grand theft. The Director noted that the Applicant was a perpetrator of domestic violence and taking property from others, and she created numerous victims through her crimes during her time in the United States. The Director acknowledged the letters of support in the record from the Applicant's daughters and friends but noted that none of the letters indicate awareness of the Applicant's arrest and criminal history and of her rehabilitation. Accordingly, the Director concluded that the record did not establish that the Applicant's continued presence in the United States was in the public interest such that she warranted a positive exercise of discretion to adjust her status to that of an LPR.

On appeal, the Applicant submits additional evidence which she asserts establishes her eligibility, most relevantly: an updated personal statement that reiterates information from her prior statements; new supporting statements from her family and other individuals in her life; and copies of her tax returns from 2015 to 2020. The Applicant contends, in part, that her application merits a favorable exercise of discretion as all her offenses are misdemeanors, and she was never convicted of a felony.

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). Upon *de novo* review of the record, as supplemented on appeal, the Applicant has not made such a showing. We have considered the favorable factors in this case, including the evidence of hardship to the Applicant and her family if this application is not granted. We acknowledge that the Applicant has three U.S. citizen daughters, grandchildren and a husband, and has lived in the United States for over 30 years. The Applicant also has a history of employment and paying taxes, as indicated in the tax returns from 2015 to 2020 submitted on appeal. The Applicant also submits letters of support from her daughters and friends stating that she is a good person and is kind and is always helping others. The Applicant further states that she fears returning to Mexico because her abusive ex-husband lives there and fears he will find her. She also said that she will suffer financially if she returns to Mexico since it will be difficult to find a job. However, notwithstanding

these factors, the Applicant has not demonstrated that she merits a favorable exercise of discretion to adjust her status to that of an LPR in light of her criminal history.

As stated, the record reflects the Applicant was arrested on five separate occasions between 1993 and 2014. The record, however, does not include arrest reports or court dispositions for any of the Applicant's arrests but does include law enforcement records reflecting the Applicant's arrests and convictions. The Applicant submitted a letter from the Office of the Sheriff of the County [redacted] that acknowledged the Applicant's request for a copy of her arrest reports but stated that their office does not release crime reports.[1] The Applicant also submitted a letter from the Superior Court of California County [redacted] acknowledging the Applicant's request for documents regarding her arrests in 1993 and 2003 but stating that misdemeanor case files are destroyed after seven years.

According to law enforcement records, the Applicant was first arrested in [redacted] 1993 and convicted of burglary and sentenced to 24 months of probation, one day in jail, and required to pay fines and fees. The second arrest occurred in [redacted] 1993 and the Applicant was ultimately convicted of petty theft and sentenced to 24 months of probation, one day in jail and payment of fines. In [redacted] 2003, the Applicant was arrested for battery but pled nolo contendere and was convicted of a misdemeanor offense of fighting: noise and offensive words and sentenced to 36 months of probation, 10 days in jail, and payment of fines and fees. In [redacted] 2004, the Applicant was arrested and convicted of inflicting corporal injury on a spouse/cohabitant and was sentenced to 36 months of probation, 30 days in jail, and payment of fines and fees. The Applicant was last arrested in 2014 on a felony charge of conspiracy to commit a crime (grand theft) but law enforcement records in the record indicate she was convicted on the misdemeanor charge of the conspiracy offense and was sentenced to 36 months of probation, two days in county jail less credit for two days, community service, restitution, and payment of fines and fees.

The Applicant's most recent arrest for conspiracy to commit a crime in 2014 occurred after the Applicant had been granted U nonimmigrant status. According to the felony complaint for the arrest warrant, the Applicant committed the felony of conspiracy to commit a crime and conspired with another individual to commit the crime of grand theft. The complaint stated that the overt acts by the Applicant were that she accepted a claims receipt and lottery ticket worth $20,000 from the co-conspirator; presented the claims receipt and lottery ticket to the California State Lottery office; and, completed a winner claim form under penalty of perjury attesting that she was the rightful owner of the ticket while knowing that the ticket had been obtained from its rightful owner by deceit. As stated, although the Applicant was arrested on a felony charge of conspiracy to commit a crime, she was convicted on the misdemeanor charge of that offense. The Applicant indicated that she paid the fine and restitution and that her probation ended.

In the Applicant's statement before the Director addressing her 2014 arrest and conviction, she explained that her friend, who worked at a gas station, sold a winning lottery ticket and mistakenly paid the winner only $20 for a lottery ticket worth $20,000. The Applicant said her friend told the manager she would find the purchaser of the lottery ticket, but she did not know how to locate that

[1] Although the Applicant did not indicate which arrest report she requested from the Office of the Sheriff of the County of [redacted] this office, all of the Applicant's arrests were in the same county and presumably within the jurisdiction of this office.

individual. She said that her friend did not want to get in trouble at work and asked her to claim the ticket instead. The Applicant stated that the prize could only be claimed at the office of the state lottery, and since her friend did not have a social security number, she asked the Applicant to claim the prize from the lottery office. The Applicant stated that she had a lapse of judgement and decided to help her friend. The Applicant recalled that she went to the state lottery office to fill out paperwork and turn in the ticket but three days later she was called back to the office where she was questioned by an officer. The Applicant said that she was arrested the next month and convicted of a misdemeanor while her friend was convicted of a felony.

On appeal, the Applicant seeks to mitigate her culpability for her conduct underlying her 2014 conviction for a conspiracy to commit a crime, contending that "there was no agreement for [her] to gain anything, money or otherwise" from helping her friend and she had been "naïve and used bad judgement." The Applicant states during the entire time she was helping her friend, she did not know she deceived the rightful owner of the ticket, which in this case was an undercover officer. We acknowledge the Applicant's claim that she made a mistake; however, in assessing the Applicant's criminal record, we look at the record of conviction and may not look behind her judicial record to reassess her guilt or innocence. *See Matter of Rodriguez-Carillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine guilt or innocence); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996).

The Applicant also claims the Director erred in relying on the felony complaint for the arrest warrant for this 2014 arrest because it contained only allegations and not the precise "ultimate facts" that were established as part of the plea to convict the Applicant. She asserts that the Director further erred in "implicitly" relying on the severity of the felony level offense with which she was initially charged, because she was ultimately only convicted of a misdemeanor and not a felony. Although the record indicates that the charges levied against the Applicant were ultimately reduced from a felony to a misdemeanor, the fact that the Applicant was not *convicted of* felony charge does not equate with a finding that the underlying conduct or behavior leading to those charges did not *occur* and were not serious. *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination) (emphasis added). The Applicant also has not otherwise shown that the felony complaint describing her criminal conduct is unreliable. It is "especially appropriate" for us to consider the factual information contained in a criminal complaint, as all relevant factors concerning an arrest and conviction should be taken into account in exercising our discretion. *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988). Further, the Applicant, who bears the burden to establish that discretion is warranted, did not submit the plea agreement or any other court or law enforcement documents to show that she pled to different facts than those outlined in the felony complaint, as she asserts. As such, we find no error in the Director's decision to afford significant adverse weight to the underlying factual circumstances set forth in the Applicant's 2014 felony complaint.

Apart from the 2014 arrest and conviction, as noted, in 2003, the Applicant was arrested for battery but convicted for fighting/noise/offensive words, and in 2004, she was convicted of inflicting corporal injury on a spouse/cohabitant. The Applicant explained that both incidents involved her abusive former spouse, who she notes was the perpetrator of the qualifying crime of domestic violence committed against her in 2007 that was the basis for her U status. The Applicant explained that her former spouse was physically and mentally abusive to her by hitting her, throwing things in the house,

and terrorizing her and her daughters. The Applicant indicated that with respect to the 2003 arrest, she was initially charged with domestic battery, but that it was "telling" that the charge was amended to disturbing the peace. The Applicant stated that she was the one who called the police when her former spouse was physically abusing her and taunting her by telling her she would get arrested if she called the police. In addition, she asserts that as to the 2004 arrest, she was defending herself from her abuser and it is in the public interest for a mother to defend herself and her young children. The Applicant stated that her former spouse was in a "fit of anger" and hitting her and cursing at her in front of her children. She said that at one point, she put her hands up and pushed backwards and she accidentally scratched her former spouse in the face as "self-defense." Once the police arrived, the Applicant explained that the officers saw the scratch on her former spouse's face but did not see any bruises on her and she was arrested. The Applicant also stated that her former spouse spoke English to the officers and told them the Applicant was the aggressor, and due to her language barrier she was not able to articulate the events as she lived it. The Applicant therefore contends that the Director committed prejudicial error in finding that her arrests in 2003 and 2004 involved behavior that puts others at risk of injury and is not in the public interest. We acknowledge that the Applicant suffered trauma from the domestic violence in her past relationship, and we do not seek to diminish the severity of the Applicant's past trauma and abuse. However, as we previously noted, in assessing the Applicant's criminal record, we may not look behind the record of conviction to reassess the Applicant's guilt or innocence. *See Matter of Rodriguez-Carillo*, 22 I&N Dec. at 1034; *Matter of Madrigal-Calvo*, 21 I&N Dec. at 327. Here, the record indicates that the Applicant was convicted of inflicting corporal injury on her spouse.

With respect to the Applicant's 1993 conviction for burglary, she explained that she stole diapers and milk for her baby daughter. As to her second arrest in 1993 leading to a conviction for petty theft, the Applicant claimed that this conviction does not pertain to her. In her statements before the Director and on appeal, the Applicant stated that her sister who was visiting from Mexico got arrested and may have given the officer the Applicant's name. On appeal, the Applicant acknowledges that this arrest is part of her fingerprint record, but now maintains it was her sister who was arrested and provided the Applicant's name at the time of the arrest. The Applicant states that she went to the courthouse to search any records that may appear under her name for that incident, and she submitted before the Director a letter from a criminal court indicating that there were no court records under her name and under the criminal case number the Applicant provided.[2] On appeal, counsel indicates that the Applicant may submit a claim to the State of California to challenge this 1993 conviction for petty theft but did not submit any evidence indicating the Applicant corrected her criminal record to reflect that she was not the subject of the petty theft conviction. In addition, the Applicant did not provide any explanation as to how her fingerprints, rather than her sister's, were taken at the time of the arrest and came to be tied to this arrest.

While we acknowledge the favorable factors present in this case, they are not sufficient to overcome the Applicant's criminal history described above. 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). As discussed by the Director and in this decision,

[2] According to the documentation submitted by the Applicant, the certificate from the clerk of the Superior Court of California County o[redacted] indicated that they were unable to locate any case filed under the Applicant's name and the specific case number provided to the court. However, the Applicant did not indicate whether she requested a search of the court records with only her name and date of birth and without reference to the case number.

the Applicant has multiple arrests and convictions, and the most recent 2014 conviction occurred while she was in U nonimmigrant status and waiting to pursue this adjustment application. The Applicant acknowledges four out of the five convictions reflected in the law enforcement records and she has not demonstrated that the fifth conviction for petty theft, attributed to her in law enforcement records based on fingerprint identification, does not relate to her as she maintains. Notwithstanding the Applicant's assertions that her convictions were all misdemeanors, the record reflects that her 2004 arrest led to a conviction for infliction of injury to spouse, which, while not recent, involved serious behavior relating to domestic violence by her. Additionally, her 2014 conviction involved a charge of conspiracy to commit a crime of grand theft of $20,000 by the Applicant. Given the Applicant's lengthy and varied criminal history and the serious nature of her 2004 conviction and her most recent criminal arrest and conviction after being granted U status, we find no error in the Director's determination that favorable discretion is not warranted.

Additionally, an applicant for discretionary relief with a criminal record must ordinarily also 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 the Applicant's statements to the Director, she apologized for her criminal conduct and expressed remorse for her arrests. She explained that she is embarrassed about her conduct and complied with all court requirements, including for her 2014 conviction. However, her statements reflect that she has not taken responsibility for all of her criminal history. She continues to deny any culpability for the second arrest and conviction in 1993 for petty theft, and instead, she maintains it was her sister who was the subject of the arrest and subsequent conviction, despite law enforcement records indicating that her fingerprints are associated with that arrest. Regarding her 2014 arrest and conviction, the Applicant again attempts to mitigate her responsibility, stating that she believed she was helping a friend and had no intention to deceive. Further, although the Applicant stated that she completed all of her probation, she did not provide any court dispositions or documentation to indicate she completed her probation successfully. Accordingly, the record as a whole does not sufficiently demonstrate the Applicant's remorse and rehabilitation for her criminal conduct.

The arguments advanced on appeal are not sufficient to overcome the Director's discretionary denial of the Applicant's U adjustment application. To summarize, among other factors, the Applicant's family ties in the United States; her victimization by her former spouse and her subsequent assistance to law enforcement; the physical and psychological harm she and her family suffered as a result of such victimization; employment and community ties; hardships to herself and her family if she had to return to Mexico; letters of support, and evidence of tax payment history, while favorable, are not sufficient to establish that her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest, given the nature, severity, and recency of her criminal history and insufficient evidence of her remorse and rehabilitation for her recent criminal history. Consequently, the Applicant has not demonstrated that she merits a favorable exercise of discretion to adjust status under section 245(m) of the Act.

ORDER: The appeal is dismissed.