U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20964866

DATE: MAY 24, 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 1-485, 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. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 245(m) of the Act contains the eligibility requirements for individuals seeking to adjust status to that of a lawful permanent resident (LPR) based on having been granted U status. U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, "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). The decision to approve or deny a U adjustment application filed under section 245(m) of the Act is a discretionary determination that lies solely within USCIS's jurisdiction. *See* 8 C.F.R. § 245.24(f).

In addition, an applicant for adjustment of status under 245(m) must comply with the general eligibility and documentary requirements to adjust status at 8 C.F.R. section 245.24, which requires that the applicant submit evidence establishing that approval is warranted and supporting documentation supporting a favorable exercise of discretion. 8 C.F.R. § 245.24(d)(10-11).

II. ANALYSIS

The Applicant was granted U-1 nonimmigrant status as a victim of qualifying criminal activity in October 2014, until September 2018. The Applicant filed the instant U adjustment application in September 2018. In December 2020, prior to making a decision, the Director issued a request for

additional evidence (RFE) requesting additional criminal history documentation, evidence of continuous presence, an explanation for any alias the Applicant used in the past, a valid Form I-693, Report of Medical Examination and Vaccination Record, and a statement in his own words describing the circumstances and his behavior that resulted in each of his arrests and convictions, among other things. The Applicant responded timely to the RFE and provided the Director with a letter from his attorney, an affidavit, evidence of continuous physical presence, court documentation for the Applicant's criminal history, a letter from the court explaining why certain records were unavailable, letters of support from family and friends, as well as an updated Form I-693. In September 2021, the Director denied the Applicant's U adjustment application, concluding that the adverse factors outweighed the positive and mitigating equities in the case such that the Applicant did not establish that a favorable exercise of discretion was warranted. The Director concluded that the Applicant submitted insufficient evidence to fully understand the circumstances that led to his arrests.

On appeal, the Applicant contends that the Director erred in denying his U adjustment application as he provided sufficient evidence to establish his eligibility for adjustment of status based on his U nonimmigrant status. Specifically, the Applicant contends that the Director overemphasized his criminal history, did not adequately weigh the positive factors, did not analyze all of the evidence of rehabilitation, and did not acknowledge that he had been provided a waiver for his past criminal history during the adjudication of his U petition,[1] among other things.

The adverse factors in this case relate to the Applicant's immigration and criminal history. The record reflects that the Applicant committed several immigration violations, including entering without permission or parole in 1994, being ordered removed from the United States in 1998, and subsequently reentering without permission or parole in 1998. In addition, the Applicant has been arrested or convicted for six crimes while living in [redacted] Washington. As noted by the Director, the Applicant was convicted twice for driving with a suspended license in 1996 and 1997. The Director also determined that the Applicant was convicted of four domestic violence related offenses in a 20-month period from [redacted] 1996 to [redacted] 1998. A [redacted] 1998 conviction for domestic violence was particularly serious. The Director described the serious violent nature of the Applicant's conviction from an incident in [redacted] 1998, as found in a certification of probable cause submitted by the Applicant, that indicated that the Applicant beat and dragged his girlfriend by her neck with a metal wire.[2] The certification of probable cause is the only evidence in the record detailing the circumstances

[1] We note that U adjustment applicants are not required to establish that they are admissible. *See* 8 C.F.R. § 245.24(d)(11). Therefore, even if an applicant receives a waiver for certain grounds of inadmissibility in the past, the underlying conduct that led to the grounds of inadmissibility can still be contemplated in a discretionary determination. *See id.* We acknowledge that the Applicant previously received a waiver for grounds of inadmissibility, however, still consider all negative factors in making a discretionary determination.

[2] The Applicant argues that the Director's improperly relied on the certification of probable cause and cited to *In Re Arregui De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995) for the proposition that arrest reports should not be given substantial weight, "absent a conviction or corroborating evidence of the allegations contained therein." However, in this case the Applicant was convicted of the crime that the certificate of probable cause describes, and therefore, the Director properly attributed it substantial negative weight. *See Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) (holding Board of Immigration Appeals has authority to review "police reports and complaints, even if containing hearsay and not a part of the formal record of conviction" because such documents "are appropriately admitted for the purposes of considering an application for discretionary relief").

of the Applicant's [redacted] 1998 conviction, and the Applicant neither disputes the contents of the certification of probable cause nor provides his own description of the events.

The Director found that after his last domestic violence conviction in [redacted] 1998, the Applicant was order removed by an immigration judge, and the criminal court ordered a warrant for his arrest. The Applicant promptly reentered the United States later in 1998 and did not report back to the criminal court until he was arrested in 2007 for the outstanding warrant. The last time the Derivative was arrested occurred in [redacted] 2008 for fishing illegally. The Director was unable to determine the severity of the underlying conduct of the convictions because the record did not contain police reports, court records, or a statement from the Applicant explaining the circumstances surrounding the events of each conviction.

With regard to positive equities, the Director considered the Applicant's residence in the United States, his employment and tax records, and his wife and U.S. citizen children as positive equites in his case. The Director also specified that the Applicant's assistance to law enforcement regarding the qualifying criminal activity committed against him was a positive factor. The Director indicated that the clinical evaluation and the contents of the subsequent report were a positive factor weighed in his favor as were the letters of support submitted by family and friends on his behalf. Contrary to the Applicant's position, the Director weighed all these positive factors in his favor.

Upon review of the record, we agree with the Director's discretionary analysis that the Applicant did not provide enough information about his criminal history to show by a preponderance of the evidence that discretion is warranted in this case. In the RFE, the Director stated that USCIS was requesting additional evidence necessary to adjudicate his U adjustment Application. The Director asked the Applicant to submit, among other things, information and all documents related to his criminal history, including police documents, court documents, and a personal statement describing the circumstances surrounding the events that led to arrests or convictions. While the Applicant provided a letter from [redacted] District Court in Washington stating that the court does not maintain records beyond three years, it instructs the Applicant to contact the Washington State Patrol Identification and Criminal History Unit to search the Washington disposition repository. There is no evidence, and the Applicant does not contend, that he made efforts to obtain records from the Washington disposition repository. Additionally, while the Applicant provided a personal statement, it does not describe the circumstances and behavior that resulted in the arrests and does not explain why he was unable to submit the criminal documents from the Washington disposition repository. We also note that the Applicant did not use the opportunity on appeal to supplement the record with the requested documentation. Given the information included in the record, the Applicant's conviction of a particularly serious and violent domestic violence offense weighs heavily as a negative factor and is not mitigated by the Applicant's positive equities as described above.

Therefore, we agree with the Director that given the lack of information regarding the Applicant's past criminal history, and the severity of his criminal record, the Applicant has not shown by a preponderance of the evidence that USCIS should exercise its discretion and grant his U adjustment application, or that his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

III. CONCLUSION

The Applicant has not demonstrated 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 a favorable exercise of discretion is warranted. Accordingly, the Applicant is ineligible to adjust his status to that of LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.