U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24950021

Date: APR. 10, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status of 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 Adjust Status of U Nonimmigrant (U adjustment application). We summarily dismissed the Applicant's subsequent appeal. The matter is now before us on a motion to reopen.[1] On motion, the Applicant submits a brief and additional evidence. Applicants for U adjustment bear the burden of establishing eligibility pursuant to section 291 of the Act, 8 U.S.C. § 1361, and must establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to an LPR if that individual demonstrates, among other requirements, that he or she has been physically present in the United States for a continuous period of at least three years since admission as a U nonimmigrant and continuing through the date of the conclusion of adjudication of the U adjustment application. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(a)(1). To demonstrate continuous physical presence, a U adjustment applicant must provide, in pertinent part, a photocopy of all pages of all passports that were valid during the three-year period in U status prior to the filing of the U adjustment application, or an equivalent travel document or an explanation of why he or she does not have a passport. 8 C.F.R. § 245.24(d)(5).

[1] In August 2022, we summarily dismissed the Applicant's appeal because he did not identify any erroneous conclusion of law or statement of fact in the Director's decision. In addition, we noted that the Applicant did not submit a brief or additional evidence which he indicated that he would submit within 30 days. On motion, the Applicant submits a brief and supporting evidence specifying errors of law and fact in the underlying decision. This documentation is sufficient to overcome the grounds for our summary dismissal of the appeal. Accordingly, we consider the merits of the motions below.

USCIS may in its discretion adjust the status of individuals lawfully admitted to the United States as U nonimmigrants to that of an LPR if, among other eligibility requirements, they establish that 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.

A favorable exercise of discretion to grant applicants 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). Where adverse factors are present, the applicant may submit evidence establishing mitigating factors. *See* 8 C.F.R. § 245.24(d)(11) (stating that, "[w]here adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating factors 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, was granted U nonimmigrant status from August 2013 until August 2017. He filed the instant U adjustment application in September 2016. In May 2022, the Director denied the Applicant's U adjustment application, in part, because he did not submit a legible photocopy of all pages of his passport valid from June 9, 2017, to June 9, 2023. On motion, the Applicant submits an illegible photocopy of his passport valid from June 9, 2017, to June 9, 2023. However, we note that the Applicant previously submitted a legible photocopy of this passport in June 2022. Therefore, we withdraw this reasoning for the Director's decision to deny the U adjustment application.

The Director additionally denied the U adjustment application as a matter of discretion, concluding that the Applicant's favorable and mitigating factors did not outweigh the adverse factors present in the case. In this regard, the Director noted the Applicant was convicted for criminal offenses in Mexico that included Assault and Robbery. On [redacted] 1996, a prison sentence of 25 years, 3 months and a fine of 538 days of minimum "salary" were imposed on the Applicant for the crimes of Assault and Robbery against C-G-M-.[2] The Director noted that the conviction appeared to constitute a violation of section 212(a)(2)(A)(i)(I) of the Act Conviction or Commission of a Crime Involving Moral Turpitude.[3] Regardless of whether this conviction constitutes a crime involving moral turpitude, we note that the Director may properly consider it in weighing the adverse and favorable factors in the record. The Applicant submitted a translated document from the Criminal Court of the Judicial District in [redacted] Puebla indicating that, on appeal, on or about March 26, 2009, "for the crimes of assault, qualified robbery, has been declared the benefit of adequacy of sentence in favor of the inmate, having purge by the maximum definitive imprisonment,

[2] We use initials to protect the privacy of individuals.

[3] In June 2012, the Applicant filed a Form I-192, Application for Advance Permission to Enter as Nonimmigrant and it was approved concurrently with the Form I-918, Petition for U Nonimmigrant Status. However, the only ground of inadmissibility waived under the Act was INA section 212(a)(6)(A)(i) – Alien Present without Inspection, Admission or Parole.

dictated by what is ordered the immediate release of the accused." Thereafter, the Applicant was released from incarceration in [redacted] 2009. In a statement submitted in response to a request for evidence, the Applicant indicated that a new law had passed stating that anyone under 19 years old convicted of this crime could not have a sentence that exceeded seven years. Hence, he was released after serving 13 years and 3 months. The Director also observed that shortly after being released early from a 28-year prison sentence, the Applicant unlawfully entered the United States in April 2009.

In addition, on [redacted] 2010, the Applicant was arrested/cited for Open Container of Beer/Wine and Driving Without a License. He stated that he paid a fine. On [redacted] 2011, the Applicant was arrested for Driving While Impaired, and on [redacted] 2012, was convicted of Impaired Driving[4] and sentenced in part to 60 days imprisonment suspended, 12 months unsupervised probation, 24 hours community service and compliance with pre-trial substance abuse assessment. On [redacted] 2014, the Applicant was arrested/cited for Speeding, 81mph in a 65mph zone. He was found responsible for the lesser offense of Improper Equipment-Speedometer. Based on the foregoing criminal history, the Director determined that the Applicant's behavior posed a risk to public safety.

Against the adverse factors, the Director acknowledged the favorable and mitigating factors present in the Applicant's case, including his lengthy residence in the United States since April 2009; his family ties, including his wife and U.S. citizen stepdaughter; helpfulness to law enforcement regarding qualifying criminal activity; the trauma the Applicant suffered as a result of qualifying criminal activity; his employment at a pallet factory; and evidence of tax filings. The Director also acknowledged the Applicant's mortgage, car payments, and a personal line of credit that he was paying with his spouse, and his concern that he would default on these loans if he were to return to Mexico. Thus, the Director considered the Applicant's property ties and financial responsibilities as favorable factors in his case and weighed them in his favor. The Director considered the high crime rates in Mexico a humanitarian factor; and acknowledged the several letters of support from family, friends, his employer, and a reverend. However, some of the writers stated that they had never known the Applicant to be in any kind of trouble, illustrating that they did not appear to have full knowledge of the Applicant's criminal convictions and long-term prison sentence in Mexico. Therefore, the Director gave some of these letters minimal weight. Overall, the Director concluded that these favorable and mitigating factors were outweighed by the adverse factors of his criminal history.

On motion, the Applicant contends that he would be otherwise entitled to a waiver for crimes more than 15 years old and crimes involving moral turpitude under INA section 212(h). However, as previously stated, the Applicant's conviction from Mexico need not be considered a crime involving moral turpitude in order for the Director to consider it an adverse factor. As such, the Applicant's reference to a waiver is inapposite. The Applicant further argues that he has rehabilitated and has not been arrested or accused of any felony criminal acts during his 13 years in the United States. He argues that he provided sufficient favorable evidence in support of his U adjustment application. With his motion, the Applicant submits, among other things: a loan agreement; a mobile home quote; a LoanStar payment schedule; a credit union transaction history; a loan payment transaction history and promissory notes; photocopies of his other two passports; a letter of support from his step-daughter, her birth certificate, her U.S. passport and records from her school; and a 2022 letter of support from

[4] N.C. Gen. Stat. Ann. § 20-138.1 (West 2010).

C-T- similar to his 2016 letter in which he describes the Applicant as generous and kind with a great work ethic.

The evidence and arguments submitted on motion, while relevant, are not sufficient to overcome the discretionary denial of the Applicant's U adjustment application because of his criminal history. 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. *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978). In regard to alcohol-related crimes, DUIs pose a risk to public safety that is not inherent in other types of offenses. *See Matter of Siniauskas*, 27 I&N Dec. 207, 208 (BIA 2018) (citations omitted) (holding that in a determination of whether an alien is a danger to the community in bond proceedings, driving under the influence is a significant adverse consideration); *Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (discussing the "reckless and dangerous nature of the crime of DUI"). Here, shortly before obtaining U nonimmigrant status, the Applicant was arrested for Driving While Impaired and convicted of Impaired Driving. Although the Applicant asserts that his conviction was a traffic offense, the evidence in the record indicates that it was an Impaired Driving conviction, and thus it remains a serious adverse factor.

To summarize, due to his criminal history, which includes an Impaired Driving conviction and an assault and robbery conviction, the Applicant has not established that it is in the public interest to adjust his status to that of an LPR. The Applicant's favorable and mitigating factors, including his lengthy residence in the United States since April 2009; his family ties, including his wife and U.S. citizen stepdaughter; helpfulness to law enforcement; the trauma the Applicant suffered as a result of qualifying criminal activity; his employment; evidence of tax filings; property ownership as evidenced by his mortgage payments; other financial obligations; unfavorable country conditions in Mexico; and the several letters of support from various individuals are not sufficient to establish that his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given his criminal history and the recency of his DUI-related offense, which is a serious adverse factor. As such, the Applicant has not demonstrated that he warrants a favorable exercise of our discretion to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The motion to reopen is dismissed.