



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 25729071

Date: APR. 18, 2023

Appeal of Vermont Service Center 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 her “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), and the matter is now before us on appeal. On appeal, the Applicant submits additional evidence.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361, *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office reviews the questions in this matter de novo. *Matter of Christo’s Inc.*, 26 I&N Dec. 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. 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 is a citizen of Mexico who entered the United States without inspection, admission, or parole in 1995. In December 2013, the Applicant filed her U petition as a victim of domestic violence. With her U petition, the Applicant also submitted a Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application). According to the Applicant's administrative record, the Director determined that she was inadmissible under section 212(a)(6)(A)(i) of the Act as an alien present without admission or parole. In January 2017, the Director approved the U petition and waiver application, granting the Applicant U-1 status until January 2021.

The Applicant timely filed the instant U adjustment application in March 2020. In December 2021, while her U adjustment application was pending, the Director issued a request for evidence (RFE) seeking a statement of continuous physical presence, evidence of continuous physical presence, evidence of her full legal name, and evidence in support of an exercise of discretion. The Director noted that the Applicant was arrested or cited on [REDACTED] 2020, in [REDACTED] County and charged with DWI – Level 1 and on [REDACTED] 2007, in [REDACTED] County and charged with DWI – Level 5. In addition, the Applicant's criminal history showed arrest or citations for speeding, failure to wear a seatbelt (driver), no operator's license, license not in possession, unlicensed to drive, allowing unlicensed to drive, expired registration card/tag, improper equipment-speedometer, resisting police officer, failure to reduce speed, contributing to the delinquency of a minor, and DWLR impaired revocation. Thus, the Director requested a statement in the Applicant's own words describing the circumstances of her behavior that resulted in each arrest or citation. For each of her arrest or citation, the Applicant was instructed to provide documentation including the arresting officer's report, criminal complaint or charging document, certified judgment and conviction documents, and evidence of completion of any sentence, if imposed.

In response to the RFE, the Applicant provided the following: several documents establishing her continuous physical presence from 2013 through 2022;<sup>1</sup> an affidavit regarding her continuous physical presence; an affidavit addressing the discrepancy in her full legal name; an affidavit addressing why discretion should be exercised in her favor; an affidavit addressing the circumstances and behavior that resulted in the criminal charges; copies of her identification documents; computer extracts of criminal records from the Clerk of the Superior Courts of [REDACTED] for a variety of driving violations and the Applicant's two DWIs; documents describing the country conditions in Mexico; and various documentation supporting a favorable exercise of discretion.

In her April 2022 affidavit, the Applicant states that in June 2007, she travelled to [REDACTED] County for a family reunion. She explains that she had the intention to stay the night and return home the next day but during the reunion, many of her family members began to argue and say harmful things. The Applicant decided to drive home although she had been drinking. She claims that on her way home, she got lost, and was later arrested by the police. In explaining her 2020 arrest, the Applicant states

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<sup>1</sup> The Applicant submitted among other things, copies of tax returns, a warranty deed, a certificate of assumed name for a sole proprietorship, various business letters, a marriage certificate, a high school diploma, an employment authorization card, paid invoices, bank records, county tax notices, and a mortgage statement.

that her father, who she had not seen since 1995, was diagnosed with terminal cancer. She became depressed over her father's diagnosis and the COVID-19 pandemic and as a result, fell into a depression. Consequently, she admits that she began to drink but she did not describe the circumstances of her actual arrest. In the decision, the Director acknowledged the documentation the Applicant submitted in response to the RFE. However, the Director noted that the Applicant did not submit the requested arrest reports, court records, and other related documents for the Applicant's DWI arrests in 2007 and 2020. The Director explained that because there was a deficiency in the criminal records documentation, there was a consequential lack of clarity in the record which in turn made it difficult to accurately assess and determine whether a favorable exercise of discretion was warranted. Moreover, although the computer extracts of the criminal records indicated possible jail time, probation, and fines, it was unclear what, if any, of these legal obligations the Applicant completed. The Director also expressed concern about the Applicant's use of an alias and observed that her pattern of arrests and convictions indicated a troubling disregard for U.S. law.

Regarding her positive equities, the Director acknowledged the Applicant's victimization and helpfulness to law enforcement officials in the investigation or prosecution of the qualifying criminal activity that formed the basis of her U-1 nonimmigrant status. Similarly, the Director favorably considered, among other things, the Applicant's family ties, payment of taxes, employment, sole proprietorship of a construction company, and long-term residence in the U.S. However, based on a review of the totality of the record, the Director concluded that the Applicant did not warrant a favorable exercise of discretion and denied the U adjustment application.<sup>2</sup>

On appeal, the Applicant only submits new evidence,<sup>3</sup> including a copy of a November 2022 letter from the Clerk's Office of the Superior Court, [redacted] County regarding the destruction of the files for the Applicant's 2007 DWI records, and a copy of a computer extract of the 2007 criminal record from the Clerk of the Superior Court, [redacted] County. The Applicant also submits copies of the following records certified by the Clerk of the Superior Court, [redacted] County concerning her 2020 DWI arrest: Impaired Driving – Judgment Suspending Sentence;<sup>4</sup> Impaired Driving Determination of Sentencing Factors; [redacted] 2020 Completion Report for substance abuse treatment from [redacted] [redacted] 2020 North Carolina Uniform Citation for Impaired Driving; and a computer extract of the 2020 criminal record indicating in part that the judgment was paid. The Applicant also submits copies of the following uncertified court documents concerning her 2020 DWI arrest: Revocation Order When Person Present, Search Warrant for Blood or Urine in DWI Cases; Conditions of Release and Release Order; Limited Driving Privilege Impaired Driving or Open Container or Underage Alcohol Violation; Detention of Impaired Driver; 2020 Incident/Investigation Report from the [redacted] County Sheriff's Office; July 2021 affidavit from the Applicant concerning her need to drive for her construction business; and an [redacted] 2020 Completion Report for substance

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<sup>2</sup> Additionally, the Director noted that the Applicant's medical examination expired during the pendency of the U adjustment application, and that an updated medical examination was required in order to continue processing the Applicant's U adjustment application. Included in the appeal is the Applicant's updated medical examination. However, we note that the civil surgeon did not address the Applicant's use of alcohol which is customary in light of her two DWI arrests.

<sup>3</sup> The Applicant does not explain whether the evidence was previously unavailable or why she did not submit it to the Director after the RFE expressly requested these documents, or with her initial filing as the instructions to the U adjustment application dictates.

<sup>4</sup> An uncertified copy was also submitted.

abuse treatment from [REDACTED] Finally, the Applicant provides a previously submitted undated Community Service Verification Form from [REDACTED]  
[REDACTED]

The evidence submitted on appeal, while relevant, is not sufficient to overcome the discretionary denial of the Applicant's U adjustment application because of her 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, DWIs pose a risk to public safety that is not inherent in other types of offenses and are serious adverse factors as they relate to discretionary determinations. *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"). In this case, the Applicant has multiple offenses involving DWI, one of which occurred after she applied to adjust her status to that of an LPR. Although we acknowledge the Applicant's explanations and expressed remorse, this type of criminal behavior is a serious adverse factor weighing against a favorable exercise of discretion.

In the end, the Applicant's positive equities, some of which include her family ties, lengthy residence in the United States, employment history, helpfulness to law enforcement, and payment of taxes, 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 her criminal history and the recency of her DWI, which is a serious offense. Consequently, the Applicant has not established by a preponderance of the evidence that she warrants a favorable exercise of discretion to adjust her status to that of an LPR under section 245(m) of the Act.

**ORDER:** The appeal is dismissed.