U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25463074

Date: APR. 26, 2023

Appeal of Nebraska Service Center Decision

Form I-485, Application to Adjust Status

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 Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application) and the matter is now before us on appeal. This office reviews the questions in this matter de novo. *See Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand the matter to the Director for the issuance of a new decision

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").

Depending on the nature of any adverse factors, the applicant may be required to demonstrate clearly that the denial of adjustment of status would result in exceptional and extremely unusual hardship, but such a showing might still be insufficient if the adverse factors are particularly grave. *Id.* For example, USCIS will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns. *Id.*

The Applicant is a citizen of Ukraine who entered the United States with a K-1 visa in 2002. In December 2017, the Director granted the Applicant U nonimmigrant status from December 7, 2017 until December 6, 2021, based on her victimization and assistance to law enforcement. The Applicant filed her U adjustment application in March 2021.

In August 2022, the Director denied the Applicant's U adjustment application. The Director detailed the Applicant's criminal history between 1997 and 2021 and determined it was an adverse factor because her criminal record established "a negative pattern of behavior with relatively recent criminal charges." Furthermore, while the Director referenced the Applicant's declaration which described her past turmoil and betrayal by her husband and her attempted suicides, her long-term residence in the United States, her two U.S. citizen children, a criminal history that did not involve crimes of violence, the hardships she would experience if she were to return to her native country, church membership, and the Applicant's expressions of remorse for her criminal activity, the Director found that extreme hardship had not been established.[1] The Director then concluded that the Applicant had not established that her continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest, such that a grant of adjustment of status would be warranted in the exercise of discretion.

On appeal, the Applicant asserts that the Director erred in denying the U adjustment application, as the Director should have done a discretionary analysis, taking into account all relevant factors to make a discretionary determination. The Applicant also argues that the Director erred by improperly applying the higher "exceptional and unusual hardship" standard in her case, as her "negative pattern of behavior" did not result in serious violence, child abuse, drug-related crimes, or security or terrorism-related concerns.

We find that the Director erred in considering whether the Applicant had established extreme hardship because extreme hardship is not a requirement when conducting a discretionary analysis for purposes of a U adjustment application. The Director also failed to explain why the "exceptional and extremely unusual hardship" standard was referenced in the decision to deny the Applicant's U adjustment application. Consequently, the record does not reflect that the Applicant was provided a meaningful opportunity on appeal to address or rebut the Director's assessment of the evidence and basis for denial of the U adjustment application. *See* 8 C.F.R. § 103.3(a)(1)(i) (requiring in writing specific reasons for denial of an application or petition); *Matter of Saelee*, 22 I&N Dec. 1258, 1262, 1286 (BIA 2000)

[1] In the decision to deny the Applicant's U adjustment application, the Director also cited *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), whereby the Board of Immigration Appeals (Board) determined that exceptional and extremely unusual hardship "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." The Director did not explain the applicability of *Matter of Monreal-Aguinaga* and the heightened discretionary standard of "exceptional and extremely unusual hardship" to the Applicant's U adjustment application.

(citing *Matter of M-P-*, 20 I&N Dec. 786, 787–88 (BIA 1994) (finding that a decision must fully explain the reasons for denying a filing to allow the respondent a meaningful opportunity to challenge the determination on appeal); *see also Matter of A-P-*, 22 I&N Dec. 468, 474 (BIA 1999); *Matter of Palacios-Pinera*, 22 I&N Dec. 434, 439 (BIA 1998); *Matter of Air India Flight No. 10*, 21 I&N Dec. 890, 891–92 (BIA 1997). Accordingly, we will remand this matter to the Director to again consider the record in its entirety and to determine whether a favorable exercise of discretion is warranted.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.