U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29356460

Date: DECEMBER 12, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or 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 his "U" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant submits a brief. We review 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 record reflects that the Applicant was approved for U-1 nonimmigrant status from October 1, 2015 until September 30, 2019. In December 2018, he filed the instant U adjustment application. The Director denied the application, determining that the Applicant had not sufficiently addressed adverse factors contained within an investigative report produced by USCIS, indicating that the Applicant entered into a prior marriage for the primary purpose of circumventing U.S. immigration laws.[1] The Director also noted that the Applicant may also be inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation with respect to his prior marriage – an additional significant adverse factor. The Director determined that the Applicant's adjustment application did not merit a favorable exercise of discretion, concluding that the adverse factors in his case outweighed the favorable and mitigating equities,[2] and therefore, the Applicant did not demonstrate that his adjustment of status was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest.

Upon de novo review, we adopt and affirm the Director's decision with the comments below. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Here, the record reflects that during their investigation, USCIS officials conducted site visits on April 29, 2013, followed by telephonic inquiries. On May 8, 2013, the Applicant's former spouse submitted a letter to USCIS withdrawing the immigrant relative petition she filed on behalf of the Applicant. On appeal, the Applicant contends that his prior marriage was not fraudulent and asserts that the adverse information provided to USCIS by his former spouse's relatives and neighbors was not credible evidence but rather false allegations. He further asserts that his former spouse withdrew the immigrant petition solely because their marriage did not work out and they remained friends.

The Applicant's primary adverse factor relates to the USCIS investigative report which indicates that he entered into a prior marriage for the purpose of circumventing U.S. immigration laws. The record also reflects that the Applicant's former spouse withdrew the immigrant relative petition she filed on behalf of the Applicant, approximately one week after the USCIS officials conducted their site visits – indicating that the investigation likely informed the Applicant's former spouse's decision to withdraw the petition. We note here that USCIS may take into account all relevant factors in making its discretionary determination per 8 C.F.R. § 245.24(d)(11) (emphasis added), and reliance on an investigation report in adjudicating discretionary relief is permissible provided that the report is inherently reliable and its use is not fundamentally unfair. See, e.g., Matter of Grijalva, 19 I&N Dec. 713, 722 (BIA 1988) ("[T]he admission into the record of . . . information contained in the police

[1] The Petitioner was married to his first spouse from [redacted] 2005 to [redacted] 2006 and his second spouse from [redacted] 2012 to [redacted] 2014 – he married his current spouse in [redacted] 2015.

[2] The Director identified the Applicant's favorable and mitigating equities as his U.S. citizen child, employment history, payment of taxes, letters of support, community ties, and lengthy residence in the United States.

reports is especially appropriate in cases involving discretionary relief . . . , where all relevant factors . . . should be considered to determine whether an [applicant] warrants a favorable exercise of discretion."). Here, the Applicant has not provided a substantive rebuttal to the allegations in the USCIS report or established by a preponderance of the evidence that the information contained therein should not be taken into account and considered a significant adverse factor. Although we consider the aforementioned favorable and mitigating equities, due to the conduct revealed in the USCIS report and the Applicant's disregard for U.S. immigration laws, he has not demonstrated that he merits a favorable exercise of discretion to adjust his status to that of an LPR. Consequently, the Applicant has not demonstrated that he is eligible to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.