U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24040774

Date: JAN. 5, 2023

Appeal of Vermont 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 Vermont 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. On appeal, the Applicant submits a brief. 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, the appeal will be dismissed.

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 Applicant is a 47-year-old citizen of Guatemala who last entered the United States without authorization in 2009. In November 2016, the Director granted the Applicant U nonimmigrant status based on her victimization and assistance to law enforcement. The Applicant filed her U adjustment application in June 2020. In February 2022, the Director denied the Applicant's U adjustment application. The Director acknowledged the positive and mitigating equities present in the Applicant's case: her long-term residence in the United States and the presence of U.S. citizen children who depend on her financially and emotionally.[1]

However, the Director determined that the positive and mitigating equities were outweighed by the adverse factor of the Applicant's criminal history. As detailed by the Director, the Applicant was arrested in 2003 for the following felonies: assault with a deadly weapon/force likely to cause great bodily harm, battery with serious bodily injury, and accessory after the fact. The complaint document stated that the Applicant, along with a co-defendant, "did unlawfully commit an assault" upon another individual "with a deadly weapon and instrument and by means of force likely to produce great bodily injury," did "willfully and unlawfully use force and violence upon" another individual "resulting in the infliction of serious bodily injury on such person," and "unlawfully harbor[ed], conceal[ed] and aid[ed]" her co-defendant with the intent that he "might avoid and escape from arrest, trial, conviction and punishment" and with knowledge that her co-defendant had "committed a felony." The record indicates that the Applicant plead guilty to the charge of accessory after the fact; she was sentenced to probation.

In 2005, while on probation, the Applicant was arrested for driving under the influence of alcohol/drugs, driving while having a measurable blood alcohol, and driving a motor vehicle without holding a valid driver's license. The complaint document detailed that the Applicant "did unlawfully, while under the influence of an alcoholic beverage and a drug and under their combined influence, drive a vehicle," "did unlawfully, while having 0.08 percent and more, by weight, of alcohol in his/her blood, drive a vehicle," and "did unlawfully drive a motor vehicle upon a highway without holding a valid driver's license." The Applicant was ultimately convicted of driving under the influence; she was sentenced to probation.

In addition to the nature and seriousness of the above-referenced arrests and convictions, the Director noted that while the Applicant had submitted court documents, she had failed to provide the arrest reports and evidence of completion of sentence, if any sentence had been imposed, as requested by the Director in the August 2021 request for evidence. Moreover, the Applicant had not provided evidence to show that she had been rehabilitated, or a "self-affidavit indicating [the Petitioner's] side of the story" to "substantiate the discretionary evidence" in the record. The Director concluded that the record did not suffice to establish that the Applicant's continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that she warranted a positive exercise of discretion to adjust her status to that of an LPR.

[1] We also acknowledge the Applicant's past employment in the United States, the payment of taxes, church membership, the passage of more than 17 years since the Applicant's most recent arrest and conviction, and a support letter from the owner/property manager of the Applicant's residence stating that she is "respectable, honest and kind tenant" and "very prompt to pay rent on time."

On appeal, counsel maintains that the reference made by the Director to *Matter of Siniauskas*, 27 I&N Dec. 207, 208-09 (BIA 2018), was in error because in that case, the respondent had been arrested four times for driving under the influence, while in this case, the Applicant had only been arrested one time for driving under the influence. Counsel also maintains that "all the necessary documents" were submitted. Moreover, counsel contends that the Applicant has been rehabilitated because she has not been arrested since 2005, more than 17 years ago, and she is "aware that what she did was wrong and it is not something she will ever do again."

We adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

To begin, reliance on an arrest report in adjudicating discretionary relief—even in the absence of a criminal conviction—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 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."). Contrary to counsel's assertion on appeal, the Applicant has not submitted the arrest records, nor has she submitted evidence indicating that she attempted, but was unable, to procure them. In the absence of additional information or documentation which allows us to properly and fully consider the basis for and specific facts surrounding the Applicant's arrests, such as the underlying arrest report, records, or transcripts documenting her subsequent criminal proceedings, there is insufficient evidence to establish that her arrests and the serious charges levied against her in 2003 and 2005 should not be considered as adverse factors in her case or, alternatively, that lesser weight should be accorded to such evidence.

Moreover, an applicant for discretionary relief "who has a criminal record will ordinarily be required to present evidence of rehabilitation before relief is granted as a matter of discretion." *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991); *see also Matter of Marin*, 16 I&N Dec. at 588 (emphasizing that the recency of a criminal conviction is relevant to the question of whether rehabilitation has been established and that "those who have recently committed criminal acts will have a more difficult task in showing that discretionary relief should be exercised on their behalf"). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which he or she was required to comply with court-ordered mandates, but also after the successful completion of them. *See U.S. v. Knights*, 534 U.S. 112, 121 (2001) (recognizing that the state has a justified concern that an individual under probationary supervision is "more likely to engage in criminal conduct than an ordinary member of the community"). Further, when an individual is on probation, he or she enjoys reduced liberty. *See, e.g., Doe v. Harris*, 772 F.3d 563, 571 (9th Cir. 2014) (noting that, although a less restrictive sanction than incarceration, probation allows the government to "impose reasonable conditions that deprive the offender of some freedoms enjoyed by law abiding citizens") (internal quotations omitted); *U.S. v. King*, 736 F.3d 805, 808-09 (9th Cir. 2013) ("Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled.") (internal

quotations omitted). In this case, as we detailed above, while on probation, the Applicant was again arrested and charged. The Applicant does not address the probation violation. Further, the record does not establish that the terms and conditions of the court orders imposed on the Applicant for each conviction were satisfactorily met. Nor has the Applicant articulated acknowledgement, explanation, or remorse for her criminal behavior, most notably the alcohol-related driving offenses while on probation that posed a risk to the safety of the public.[2]

To summarize, we acknowledge the Applicant's family ties; employment and community ties; letter in support; and the payment of taxes. However, the favorable factors are not sufficient to establish that the Applicant's continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the nature and severity of the actions that lead to her 2003 and 2005 arrests and subsequent convictions. Consequently, the Applicant has not demonstrated that she merits a favorable exercise of discretion to adjust his status.

ORDER: The appeal is dismissed.

[2] Driving under the influence of alcohol is both a serious crime that poses a risk to others and a significant adverse factor relevant to our consideration of whether the Applicant warrants a favorable exercise of our discretion. *See Matter of Siniauskas*, 27 I&N Dec. 207, 208-09 (BIA 2018) (finding DUI a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (BIA 2019) (discussing the "reckless and dangerous nature of the crime of DUI").