U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25386242

Date: JAN. 5, 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 his "U-2" nonimmigrant status. The Director of the Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), concluding that the record did not establish that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted. The Applicant filed an appeal, which we summarily dismissed. We then reopened the matter while providing the Applicant an opportunity to submit a brief and/or evidence.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 an LPR if that individual demonstrates that they have been physically present in the United States for a continuous period of at least three years since admission as a U nonimmigrant, have not unreasonably refused to provide assistance in a criminal investigation or prosecution, and 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; 8 C.F.R. § 245.24(f).

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, a native and citizen of Mexico, was granted U-2 nonimmigrant status from April 7, 2017, until April 6, 2021, based on the U-1 nonimmigrant status of M-N-G-, his spouse at the time.[1] He timely filed his U adjustment application on November 27, 2020.

In denying the U adjustment application, the Director acknowledged the favorable factors and mitigating equities present in the Applicant's case, including his long period of stable employment, residence in the United States since 1998, emotional and economic hardship his two children would experience, and difficulty in finding employment in Mexico. The Director concluded that the Applicant's favorable factors and mitigating equities were outweighed by his adverse factors, including his criminal history which the Director discussed in detail and as follows. The Applicant was arrested in [redacted] 2016 and received a final disposition of dismissed after deferred adjudication in [redacted] 2016 for assault on a family member. His arrest report reflects that he grabbed M-N-G-'s arms and pushed her. His record also includes a [redacted] 2017 protective order against him in which the court found that there was a clear and present danger of family violence. The Applicant was arrested in [redacted] 2017 and convicted in [redacted] 2018 for violating the protective order and driving while intoxicated (DWI). The arrest report reflects that the Applicant went to M-N-G-'s residence, picked up their son to go to a friend's house, and drove back to her residence while intoxicated. In late [redacted] 2018, the Applicant violated the terms of his DWI probation by consuming alcohol. In finding that the Applicant did not merit a favorable exercise of discretion, the Director noted the recency of the harm to M-N-G-, his risk of safety to M-N-G-, the high risk of causing harm or death from a DWI, and his risk to the public safety due to his recent activity. The Director concluded that the Applicant had not submitted sufficient evidence to establish that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that he warrants a favorable exercise of discretion to adjust his status to that of an LPR.

On appeal, the Applicant submits a brief and statements from M-N-G- and their daughter. The Applicant asserts that he was together with M-N-G- for a long period of time and the domestic assault was out of character, he has presented strong evidence of rehabilitation, and he plays an important role in the life of his family. M-N-G- states that she is on good terms with the Applicant, he has changed for the better over the years, he is involved in their two children's lives, and he provides for their children emotionally and financially. The Applicant's daughter mentions that the Applicant is not a danger to anyone including M-N-G-, her parents' turmoil was a long time ago, and she and her brother spend time with the Applicant weekly.

Based on a de novo review of the record, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision

[1] Initials are used throughout this decision to protect the identity of the individual. M-G- states on appeal that she has divorced the Applicant.

below as long as they give "individualized consideration" to the case). The Director's decision provided a thorough discretionary analysis as described above, and the Applicant's submission on appeal does not include new evidence which would overcome the Director's findings. While the statements submitted on appeal reflect that the Applicant provides emotional and financial support to his children, the Director already considered this as a favorable factor. Furthermore, the brief statements on appeal related to rehabilitation are insufficient to establish that the Applicant has been rehabilitated from his criminal behavior. The Applicant's criminal behavior, the majority of which occurred while he held U-2 nonimmigrant status, was recent and serious in nature. We note that driving under the influence of alcohol is both a serious crime and a significant adverse factor relevant to whether the Applicant warrants a favorable exercise of discretion. *See Matter of Siniauskas*, 27 I&N Dec. 207, 207 (BIA 2018) (finding DUI a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *see also Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (A.G. 2019) (discussing the "reckless and dangerous nature of the crime of DUI").

Therefore, the Applicant has not established his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that he warrants a favorable exercise of discretion to adjust his status to that of an LPR.

ORDER: The appeal is dismissed.