U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23924971

Date: JAN. 20, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of 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 his "U" nonimmigrant status as a victim of qualifying criminal activity.

The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), concluding the Applicant had not established that he warrants a favorable exercise of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 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 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).

Favorable factors include, but are not limited to, family unity, length of residence in the United States, employment, community involvement, and good moral character. Matter of Arai, 13 I&N Dec. 494, 496 (BIA 1970); see generally 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). If adverse factors are present, the 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. 8 C.F.R. § 245.24(d)(11).

II. ANALYSIS

A. Relevant Evidence and Procedural History

The Applicant, a native and citizen of Mexico, entered the United States in 1997. He filed Form I-918, Petition for U Nonimmigrant Status and was granted U nonimmigrant status in October 2011, which was extended until March 2020. The Applicant's initial U adjustment application was denied in November 2015. The Director also denied the Applicant's second U adjustment application, determining the positive factors raised by the Applicant did not overcome the negative factors presented in his criminal history. On appeal, the Applicant asserts the Director erred in the discretionary analysis by placing too much weight on his criminal history and arrest reports and not recognizing some positive factors.

The Applicant presented a number of strong positive factors that were acknowledged by the Director. Other than a few months outside the country in 2001, he has remained in the United States to date. He has three young U.S. citizen children who he cares for, as well as a nephew, about 18 years old, and a niece, about 20 years old. One of his children has asthma and requires regular visits to the doctor. The Applicant owns real estate, pays taxes, and partly owns a business with over 200 employees. The Applicant also submitted a number of letters by individuals attesting to his good character.

The Applicant also has a lengthy criminal history. A number of the charges to which he pled guilty involve traffic violations dating from 2006 to 2020 and include: several instances of speeding, a few instances of driving without a license, and other charges such as disregarding a stop sign, reckless driving, failing to maintain proof of insurance, failing to use headlights, giving false information, and illegal use of defective and unsafe equipment. The cumulative volume of these convictions is considered a negative factor. The Applicant was also charged and pled guilty to obstructing justice in 2002 and of alcohol related offenses in 2009, i.e., having an open container of alcohol in a vehicle, and in [redacted] 2013, i.e., consuming alcohol in public. The Applicant did not provide arrest reports for these convictions. Further, and of most concern, the Applicant has a record of assault and battery. In 2002, the Applicant was found guilty of misdemeanor assault and battery for harming a juvenile. The Applicant was sentenced to 30 days imprisonment. The Applicant did not provide an arrest report for this conviction or any explanation for the circumstances surrounding this conviction of him harming a minor. In 2006, the Applicant was charged with misdemeanor assault and battery of a family member and a hearing date was set. The case was ultimately not prosecuted but the Applicant did not provide information regarding the arrest or the circumstances surrounding the dropped charges, e.g., whether it was due to the victim not coming forward or some other reason. The Applicant described getting into an altercation with his daughter's mother in 2010, which he stated he felt regret over, but did not provide details of, e.g., the arrest record and the disposition of the case, other than to say the record was expunged. In [redacted] 2013, the Applicant was charged with possession and consumption of alcohol (disorderly conduct) and criminal domestic violence. According to the incident report, the Applicant attacked the mother of his two children, punched her multiple times, including in the eye and face, kicked her and broke her phone in front of his two minor children. The report described the Applicant as "extremely" intoxicated and belligerent and as unable to answer questions by law enforcement. According to the report, the Applicant drove in this condition. The police officer who interviewed the victim described the injury to the victim's face. The Applicant did not contest the details raised in the police report. The Applicant completed a 26-week domestic

violence course and the charges were dismissed. The Applicant also had three other charges that were either not prosecuted or dismissed, which the Director requested arrest reports for: a 2002 felony charge for forging public records, a 2004 misdemeanor charge for failure to appear, and a 2005 felony charge for receipt of stolen goods. The Applicant did not provide an explanation for why he did not provide the reports.

B. The Applicant Has Not Demonstrated That a Favorable Exercise of Discretion is Warranted

The Applicant bears the burden of establishing that they merit a favorable exercise of discretion on humanitarian grounds, to ensure family unity, or as otherwise in the public interest. 8 C.F.R. 245.45(d)(11). Upon de novo review of the record, the Applicant has not made such a showing. We first address the Applicant's arguments with respect to the evidence being weighed prior to providing our discretionary analysis.

On appeal, the Applicant states the Director erred by seeking arrest reports for dismissed charges. However, a majority of the charges that the Director sought more information on were for convictions, e.g., his 2002 misdemeanor offense of assault and battery of a juvenile, his 2002 offense of having an open container of alcohol in a vehicle, and his [redacted] 2013 offense of consuming alcohol in public. We acknowledge the cases cited by the Applicant, including cases from other circuits and a Supreme Court case, discussing the limited probative value of arrest reports in assessing, e.g., lengths of sentencing, whether a crime is one of moral turpitude, and removability. However, the Applicant does not cite to any relevant and binding authority establishing the Director erred in requesting or considering arrest reports. Moreover, regardless of whether the arrests were dismissed, we are not precluded from considering otherwise reliable police records and arrests in our exercise of discretion. See Matter of Teixeira, 21 I&N Dec. 316, 321 (BIA 1996) (citing to Matter of Grijalva, 19 I&N Dec. 713 (BIA 1988) and Matter of Thomas, 21 I&N Dec. 20 (BIA 1995)) (finding that we may look to police records and arrests in making a determination as to whether discretion should be favorably exercised), see also 8 C.F.R. § 245.24(d)(11) (explaining that USCIS may take into account "all factors," including acts that would otherwise make an applicant inadmissible, in making our discretionary determination).[1]

The Applicant also states that the Director erred by heavily focusing on the arrest reports for dismissed charges. The Applicant cites to Matter of Arreguin, 21 I&N Dec. 38, 42 (BIA 1995), for the proposition that substantial weight should not be given to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein. Other than the incident report for the 2013 assault and battery charge, the details of which the Applicant does not contest, the Applicant did not provide arrest reports for the charges that were dismissed or not prosecuted, so the Director could not have "heavily focused" on the arrest reports for the dismissed charges. The Applicant goes on to conclude that arrest reports for dismissed charges should not be considered. However, this is not what the court in Matter of Arreguin stated. In interpreting Matter of Arreguin, the Fourth Circuit stated the court did not indicate that it was per se improper to consider an arrest report. Sorcia v. Holder, 643 F.3d 117, 126 (4th Cir. 2011). The Applicant has not established that the incident report was

[1] The Applicant concedes that in Matter of Teixeira and Matter of Thomas, the immigration judge correctly considered police reports but asserts that such consideration should only be limited to serious crimes like murder. The Applicant does not cite to legal authority in support of his assertion.

unreliable. And, as discussed above, we may consider reliable police reports in our exercise of discretion.

The Applicant also asserts the Director placed an "inordinate" amount of weight on the missing reports in the denial's discretionary analysis. In support of his assertion, the Applicant refers to the number of times the Director mentions the missing arrest reports in the denial. The Director listed the Applicant's arrests and indicated the ones the Applicant did not provide, despite specifically being requested for in a request for evidence (RFE). As discussed earlier, it is the Applicant's burden to establish he warrants a favorable exercise of discretion. As the Court explained in Matter of Teixeira, 21 I&N Dec. at 321, police reports bear on the issue of the Applicant's conduct when arrested and are germane to whether the Applicant merits discretionary relief. We do not interpret the Director's detailing of missing evidence as providing undue weight, but rather a clear indication of the Applicant's noncompliance with the RFE, which in and of itself may be a ground for dismissal. See 8 C.F.R. § 103.2(14) (providing an applicant's failure to submit requested evidence, which precludes a material line of inquiry, shall be grounds for denying the benefit request).

Turning to the decision's discretionary analysis, we conclude the Director appropriately weighed the positive factors raised by the Applicant. However, the Applicant asserts on appeal that he has only had trafficking infractions since 2013 and the Director did not weigh the passage of time in favor of finding him a changed man. 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. See Matter of Marin, 16 I&N Dec. 581, 584-85 (BIA 1978). The Applicant's criminal history reveals a pattern of assault and battery and violent conduct of the type the U program was created to protect against. See section 101(a)(15)(U)(iii) of the Act (including, as qualifying criminal activity, "felonious assault"); 8 C.F.R. § 214.14(a)(9) (same); Interim Rule, New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007) ("In passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence, sexual assault, . . . and other crimes while offering protection to victims of such crimes."). The Applicant's criminal record also contains alcohol related arrests and convictions and numerous traffic-related convictions, evidencing a disregard for the laws of the United States. Without arrest reports or other similar documentation to clarify the circumstances surrounding his arrests and convictions, we (including the Director) are unable to analyze whether the Applicant has been forthcoming with USCIS and has accepted responsibility for his actions, which calls into question the extent to which he has rehabilitated. See Matter of Marin, 16 I&N Dec. at 588 (noting that an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation); Matter of Mendez-Moralez, 21 I&N Dec. 296, 304-5 (BIA 1996) (stating that rehabilitation includes the extent to which an applicant has accepted responsibility and expressed remorse for his or her actions). Other than meeting court requirements, the Applicant has not provided persuasive evidence of his rehabilitation.

The Applicant further asserts that the Director did not favorably consider that he was granted U nonimmigrant status and was recently approved for an extension of this status. The Applicant continues by saying the Director erred in denying the adjustment application because adjustment of status through a U visa is available to almost anyone, as long as they are not a terrorist, a Nazi, or a persecutor. We agree that section 245(m) of the Act clearly carves out from adjustment "[p]articipants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing."

However, adjustment pursuant to section 245(m) of the Act requires the Applicant to meet all eligibility requirements and demonstrate "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 does not cite to legal authority for his assertion that adjustments are granted to almost anyone. Furthermore, the Act does not provide that noncitizens should automatically have their criminal records waived and their adjustment applications approved simply for being U nonimmigrant status holders. We acknowledge that USCIS approved the Applicant's extension of status request. Nonetheless, the Applicant's U adjustment application is a separate proceeding under section 245(m) the Act and any prior determination in the non-immigrant context is not binding in these proceedings.

Weighing the factors presented in the record, we do not agree with the Applicant that his positive factors outweigh his negative factors. The Applicant has presented evidence of family unity and humanitarian equities, which include his family ties in the United States, business ties, history of steady employment, and positive supporting letters from friends and acquaintances. Notwithstanding these factors, however, the Applicant's arrests and convictions, particularly for his assault and battery and alcohol offenses, are significant negative factors. Further, the lack of information regarding the underlying circumstances of his arrests and convictions prevents us from understanding the risk the Applicant poses to public safety and extent to which he has rehabilitated. For these reasons, the Applicant has not established 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.

III. CONCLUSION

The Applicant has not established 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.