



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 24546047

Date: JAN. 24, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status of a 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-1” nonimmigrant status as the victim of qualifying criminal activity. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application) as a matter of discretion, concluding that the Applicant had not established that adjustment of status was warranted on humanitarian grounds, to ensure family unity, or otherwise in the public interest. The Director based this decision on a review of the positive and mitigating equities and the adverse factors in the case, primarily focusing on the Applicant’s criminal history. The Applicant filed an appeal of the Director’s decision with our office. We dismissed the appeal after we reviewed the positive and mitigating equities, the adverse factors, and the evidence of rehabilitation; after de novo review, we agreed with the Director’s discretionary determination. The Applicant has filed a motion to reopen and reconsider our decision. Upon review, we will dismiss the motions.

**I. LAW**

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

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 proof to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). This burden includes establishing that discretion should be exercised in an applicant’s favor; 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, an 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

Although the Applicant has submitted new facts and legal arguments sufficient to meet the motion to reopen requirements, the evidence in the record is ultimately insufficient to establish his eligibility.

### A. The Applicant Has Satisfied the Requirements of a Motion to Reopen

On motion, the Applicant has submitted new evidence, as follows: an affidavit, a timeline of personal events and criminal activity, updated criminal history printouts from California and the FBI, a supporting affidavit, certified criminal case summaries, a criminal citation, a map printout, an immigration court disposition, family member medical records, birth and death certificates, and a letter of support. The Applicant also resubmits evidence previously provided in this matter. The new evidence is relevant to the consideration of positive and mitigating equities and adverse factors carried out by the Director and on appeal. Accordingly, we consider the merits of the motion to reopen below.

The Applicant has not argued that our prior decision was based on an incorrect application of law or policy as required to support a motion to reconsider. 8 C.F.R. § 103.5(a)(3). The Applicant has also not provided pertinent precedent decisions to support a showing of error. *Id.* Accordingly, the motion to reconsider is dismissed.

### B. The Applicant Has Not Established Sufficient Equities for a Favorable Exercise of Discretion

The Applicant, a native and citizen of Mexico, was granted U-1 status as the victim of qualifying criminal activity from [ ] 2014 to [ ] 2018, and timely filed the U adjustment application in August 2018. In our prior decision, incorporated here by reference, we determined that the Applicant had not established that his continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest, as required by section 245(m)(1)(B) of the Act. We determined that his criminal history and lack of rehabilitation outweighed his positive and mitigating equities. Therefore, he had not demonstrated that he merited a favorable exercise of discretion. The Applicant has not overcome these determinations on motion.

On motion, the Applicant provides additional evidence of positive and mitigating equities. He provides an affidavit indicating that he was neglected and abused by his father from a young age and that his father ultimately abandoned him. He was separated from his mother for an extended period

before being reunited with her. His mother worked two jobs and he shared a bedroom with her and his sister; the lack of privacy in his home drove him to spend more time outside and exposed to negative influences. When his maternal grandmother died, his mother withdrew and went numb. One of his few role models was then murdered, leaving him bereft and grieving. The Applicant was surrounded by youths who got into trouble and likewise lacked adult supervision. His mother became ill, he began to struggle in school, and he became financially responsible for his family at a young age.

The Applicant also explains the context for some of his criminal history in this affidavit. Regarding a 2009 arrest, he notes that as a teenager, a friend gave him pills that were discovered by a detective. The Applicant did not know what the pills were, but on testing they were found to be Ecstasy. The Applicant was sent to a diversion program to learn about abuse of alcohol and drugs. He denies the use of drugs. He was arrested for vandalism in 2011; he notes that after witnessing the murder of his role model, he felt angry and guilty. He spraypainted a wall, resulting in a vandalism arrest. He was held for five months on this arrest, and ultimately accepted three years of probation. He was also initially charged with use of false citizenship documents, but he notes that the charges were lessened. He indicates that he only obtained the documents to work and assist his family and indicates that he did not falsify being a U.S. citizen. In 2013, he was arrested for driving without a license but cannot recall the specifics. In 2014, he was arrested for driving under the influence (DUI). He states that he only drove to safeguard his new truck, which he feared could be broken into. He emphasizes the short distance driven. He was given 36 months of probation and alcohol classes. In 2014, he was arrested for no valid license in error, as he did have permission to drive to work. In [ ] 2015, he was arrested for vehicle theft. He indicates the vehicle belonged to a friend's uncle, and the friend assured him they had permission to use the car. He only found out the uncle did not give permission when the police stopped him. The Applicant indicates he was convicted of a lesser charge of taking a vehicle without permission and was sentenced to three years of probation. He acknowledges an arrest in [ ] 2016, but indicates he is unaware of the basis as he had resolved his cases and paid his fines. Finally, he addresses a [ ] 2021 DUI arrest; he indicates this case has never been initiated in the courts. However, he intends to fight the case, as he was not the driver of the vehicle and the arrest is unfounded.

In addition to providing the affidavit, the Applicant submits a letter from his current partner. His partner confirms that she was the driver in [ ] 2021 and there is no basis for the most recent DUI arrest. He submits a supporting letter from a coworker, who indicates that the Applicant is a hardworking employee who exhibits a strong work ethic and positive attitude.

After consideration of this new evidence, the adverse factors are found to outweigh the positive and mitigating equities. We acknowledge the difficulties in the Applicant's life, particularly during his childhood. In particular, we recognize the Applicant's claims of parental abuse and neglect, as well as the impacts from the deaths of his grandmother and close friend. We have also considered the Applicant's role as a financial provider for his family and note that he is now the father to two U.S. citizen children. These factors are evaluated in conjunction with the previously-submitted evidence of lengthy residence in the United States since infancy, family ties, employment history, property ownership, and payment of taxes. These positive and mitigating equities, while significant, are not sufficient to overcome the adverse factors present in this case.

We acknowledge that the Applicant has provided explanations and context regarding several arrests, but, as noted in our appeal decision, he has not provided arrest reports or other documentation containing law enforcement descriptions of the underlying conduct. This evidence was initially requested by the Director in a Request for Evidence (RFE) issued in 2019. While the Applicant has provided additional documentation regarding his arrests in response to the RFE, on appeal, and again on motion, he has not provided narratives prepared by the arresting officers. Without these documents, we cannot verify the Applicant's account of the events leading to his arrests or accurately ascertain the extent of his criminal behavior.

As we noted on appeal, an applicant's criminal history is evaluated for its "nature, recency, and seriousness." *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978). The Applicant previously asserted that he had "no issues" after 2016. The affidavit provided on motion addresses a 2021 DUI arrest as outlined above, but it does not otherwise address the Applicant's conduct after 2016. The Applicant's conduct beginning in [ ] 2014 is relevant not only for its recency, but also because he was either in U nonimmigrant status or requesting to adjust status throughout this period. After review, the documentation provided by the Applicant shows a pattern of entanglement with the justice system spanning the entirety of this period. The records reflect multiple bench warrants, additional arrests, and probation violations.

The most pertinent details of the Applicant's criminal history are laid out below. First, the Applicant was arrested in 2013 for driving without a license. He indicates in his motion affidavit that he cannot recall the details of this case. A review of the California criminal history printout shows that the Applicant was arrested on an outstanding warrant on this case in [ ] 2015 and again in [ ] 2015. These records indicate that the case remained open for some time during the Applicant's U status.

After being arrested in 2014 for a DUI, the Applicant pled guilty and accepted probation. His DUI probation began [ ] 2014, and ran through [ ] 2017. The Applicant was required to pay fines and complete a three-month DUI program by [ ] 2015. He enrolled in the DUI program in [ ] of 2014, but he was terminated from the program in [ ] 2014. The court found the Applicant had violated his probation on [ ] 2014, while he was in U status. The Applicant explains the DUI arrest by noting that he was concerned for the security of his new truck and that he drove a very short distance. However, the fact that the Applicant may have driven a short distance does not lessen the dangerousness of the decision to drive a vehicle while impaired. Driving under the influence of alcohol is both a serious crime 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, 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").

The Applicant was arrested again in [ ] 2016. In his affidavit, the Applicant notes that he had "paid his fines" and resolved his cases. Therefore, he is unsure of the reason for this arrest. However, the records provided indicate that the Applicant's responsibilities were not limited to payment of court fees or fines. Rather, the records reflect that in [ ] 2016 he was on probation for three separate offenses, beginning with the DUI case outlined above. He was then sentenced to misdemeanor probation on the vandalism case from [ ] 2016, until [ ] 2019. Finally, he was placed on

felony probation for vehicle theft for the same dates. Therefore, in 2016, the Applicant had significant ongoing court oversight. The California criminal history printout provided on motion indicates that the [ ] 2016 arrest was due to an outstanding warrant on the vehicle theft case.

The Applicant was then arrested on [ ] 2019, for driving without a license and for a license plate violation. This case remained open until [ ] 2021, when he pled guilty to an infraction on the no operator's license charge. This recent arrest is rendered more serious by its circumstances. At the time of this violation, the Applicant was on probation for both the vandalism and vehicle theft cases. As a condition of probation, the Applicant was to violate no laws. The felony probation conditions further restricted the Applicant, requiring him to carry "at all times a valid California Department of Motor Vehicles driver's license or identification card." The probation order also specifically required the Applicant to drive only when properly licensed. Although formal violation of proceedings were not initiated, the 2019 arrest, for which the Applicant ultimately accepted responsibility, violated the terms of both probationary sentences.

Turning to rehabilitation, as noted in our appeal decision, 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). The Applicant notes that he has worked to learn from his mistakes after enduring a difficult childhood and traumatic experiences. However, the Applicant was on felony probation for the majority of his U nonimmigrant status. He was not discharged from felony probation until 2019, just after being arrested again. In addition, the case summary for this 2019 reflects that he failed to appear for court dates on three occasions. The most recent bench warrant, issued in [ ] 2019, was not cleared until [ ] 2021. The California case history printout provided by the Applicant reflects that the bench warrant was active and outstanding when he was arrested for DUI in [ ] 2021. This arrest and the subsequent bench warrants were not addressed in the Applicant's affidavit on motion and were not previously disclosed. The Applicant's ongoing court involvement until 2021 precludes us from fully evaluating whether he has been rehabilitated, given the short period of time following the conclusion of his probation and his most recent arrest.

Although we acknowledge the positive and mitigating evidence provided on motion, the Applicant has not sufficiently addressed our above-mentioned concerns regarding his criminal history and lack of rehabilitation. As such, the Applicant has not demonstrated on motion that he merits a favorable exercise of discretion. Consequently, he has not established that his adjustment of status to that of an LPR under section 245(m)(3) of the Act is warranted.

### III. CONCLUSION

On motion, the Applicant has not stated the reasons our prior decision was based on an incorrect application of law or policy. We have therefore dismissed the motion for reconsideration. The Applicant has provided additional evidence relevant to the discretionary determination of whether we may approve his adjustment of status to that of an LPR and has met the requirements for a motion to reopen. We acknowledge this evidence and have considered it. However, the Applicant has not demonstrated that discretion should be exercised in his favor after taking into account all relevant factors. 8 C.F.R. § 245.24(d)(11). Consequently, the Applicant has not demonstrated that his adjustment of status to that of an LPR under section 245(m)(3) of the Act is warranted.

**ORDER:**      The motion to reopen is dismissed.

**FURTHER ORDER:**      The motion to reconsider is dismissed.