



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

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

In Re: 24041989

Date: JAN. 26, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust 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 derivative 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), concluding that the Applicant had 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 a favorable exercise of discretion is warranted. We summarily dismissed the Applicant's appeal and a subsequent motion to reopen and reconsider. The matter is now before us on a motion to reopen and reconsider. 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). 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 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, entered the United States without inspection in 2000. In November 2014, the Director granted the Applicant U-3 nonimmigrant status based on his mother’s U nonimmigrant status as the victim of domestic violence. The Applicant timely filed the instant U adjustment application in October 2018. The Director determined that the Applicant’s continued presence in the United States is not justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted. We summarily dismissed the Applicant’s appeal because it did not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. We dismissed his motion to reopen and reconsider for not showing proper cause to reopen or reconsider the decision. In support of the motion to reopen and reconsider before us, the Petitioner submits a brief, a personal statement, statements from his family, friends, and employers, and criminal records. The Applicant has overcome the grounds for the summary dismissal, and we will now determine whether he warrants a favorable exercise of discretion.

In the denial, the Director listed the evidence submitted by the Applicant with his U adjustment application and in response to a request for evidence, and we incorporate that list into our decision. The Director determined the Applicant’s favorable factors and mitigating equities included his residence in the United States since he was a young child, residence with his mother and sisters, payment of taxes, employment, statements in support of his character, trauma he suffered in witnessing his father’s domestic abuse of his mother, assistance to law enforcement, and mental and emotional harm he continues to suffer. However, the Applicant’s adverse factors were determined to outweigh his favorable factors and mitigating equities. Specifically, the Director considered his ongoing risk to public safety and disregard for U.S. law due to his criminal history, his being arrested while holding U-3 nonimmigrant status, and his lack of rehabilitation. The Director stated the Applicant was found guilty of felony shoplifting, misdemeanor shoplifting, and misdemeanor vandalism in [REDACTED] 2011; misdemeanor driving under the influence of alcohol (DUI) in [REDACTED] 2017; and misdemeanor petty theft in [REDACTED] 2019, after initially being charged with two felonies for insurance fraud-related crimes.<sup>1</sup> In regard to the Applicant’s lack of rehabilitation, the Director factored in the recency of his arrests, his repeat offenses after completing prior court sentences, and his pending probation for his petty theft conviction. 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

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<sup>1</sup> The ward petition listing the Applicant’s charges for felony shoplifting, misdemeanor shoplifting, and misdemeanor vandalism was dismissed in [REDACTED] 2012 after he completed a program of supervision under California Welf. & Inst. Code § 654.2.

grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted.

On appeal, the Applicant asserts that his first felony charge occurred in [ ] 2011 when he was 15 years old, a guilty finding in juvenile court does not constitute a conviction for immigration purposes, and his guilty findings for felony shoplifting, misdemeanor shoplifting, and misdemeanor vandalism have no bearing in this matter. The Applicant states that the events leading to his DUI occurred in [ ] 2017, over five years ago, he has not had a DUI offense since then, and he has complied with his mandatory classes and community service as part of his DUI sentence. He states that the pandemic affected his ability to pay his fines, and he is still working on paying them. Furthermore, the Applicant mentions that while he was initially charged with two felonies related to his [ ] 2018 arrest, he only pled guilty to misdemeanor petty theft, and he has not had any violations of the law since then. He asserts the Director erroneously emphasized he was charged with felonies.

Next, the Applicant mentions that while the Director considered trauma endured by him in witnessing domestic violence to his mother, the Director did not consider the abuse he suffered by his father. The Applicant states his father physically and emotionally abused him as a child, and he fears his father, who was removed to Mexico, would harm him if he returned there. The Applicant's psychological evaluation details the emotional and physical abuse he endured while living with his father for seven years, the trauma he still experiences, the effect on his judgment leading to negative behaviors, and his post-traumatic stress disorder and major depressive disorder.

The Applicant expresses remorse for his past behavior and states that letters from his mother, sisters, friends, and employer attest to his rehabilitation. Lastly, the Applicant states he intends to attend college if he obtains legal status, in order to better himself and benefit his family and community.

Upon de novo review of the record, the evidence and arguments submitted on appeal, while relevant, are not sufficient to overcome the discretionary denial of the Applicant's U adjustment application. We acknowledge the Applicant's favorable factors and mitigating equities. Specifically, the Applicant has resided in the United States since he was a young child, he has an LPR mother and three U.S. citizen sisters, and he provided information to law enforcement while interviewed in his mother's domestic violence case. The record includes his 2014 tax return and tax transcripts for 2016 and 2017, as well as evidence of his employment history. We also acknowledge the statements in support of his character, the trauma in both witnessing and experiencing domestic abuse, the psychological effects on him from the domestic abuse, and the hardship he would experience in Mexico due to separation from his family, lack of ties there, and concerns for his safety. However, the Applicant's favorable factors and mitigating equities do not outweigh his adverse factors, which include his criminal history and insufficient evidence of rehabilitation. In considering an applicant's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offenses. *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978). The record reflects that the Applicant's criminal record covers an eight-year span, with his most recent conviction occurring in [ ] 2019. His DUI arrest and conviction occurred while he maintained U-3 nonimmigration status and his petty theft arrest and conviction occurred while his U adjustment application was pending. While we are sympathetic to the Applicant's experience with domestic abuse, it does not change the risk to the public safety from his DUI conviction or the underlying acts of insurance fraud which led to his petty theft conviction. Furthermore, the Applicant's DUI conviction involved an enhancement for having a

blood alcohol concentration of 0.15% or more and the record does not establish that he has completed paying his fine. DUI 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 fact that the Applicant committed his alcohol-related crime while he maintained U-3 nonimmigrant status is an additional adverse factor to be considered.

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"). In this case, the Applicant has multiple convictions within the last six years, and he only recently completed his probation for DUI in [ ] 2022 and petty theft in [ ] 2022. While he has submitted statements from his mother, sisters, friends, and employer in support of his character, they are not sufficient to establish his rehabilitation.

The Applicant has not demonstrated, by a preponderance of the evidence, 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 positive exercise of our discretion to adjust his status to that of an LPR under section 245(m) of the Act.

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

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