



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

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

In Re: 27258782

Date: JUL. 13, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or 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 application, concluding that the record did not establish that the Applicant had provided sufficient evidence to establish that her adjustment of status was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. 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 their eligibility, section 291 of the Act, 8 U.S.C. § 1361. 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). 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 citizen of Mexico, was granted U-1 nonimmigrant status from October 2016 until October 2020. She filed her Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application) in April 2020, and the Director denied the application in November 2022.

A. Favorable and Mitigating Equities

In the record below, the Applicant submitted evidence of her favorable equities. The Applicant entered the United States in 2001 and has resided here since that time. She has two United States citizen children and another who had U-3 nonimmigrant status. Two of her children are adults, and one remains a minor. In the Applicant's statements, she stated that she desired to remain in the United States to provide for the minor child and to support her other children. The record also contains letters which attest to the Applicant being a hardworking, caring mother who provides for her children. Further, the Applicant submitted a copy of a certificate of completion for 21 weeks of anger management classes, which she completed after an arrest in 2004. In the Applicant's statement submitted in response to the Director's request for evidence (RFE), she stated that she stopped drinking and dealt with her anger issues.

In her prior statements in the record, the Applicant stated that she knew that she made mistakes and took responsibility for her arrests. She further said that following her 2014 arrest, she promised herself that she would never do anything to risk losing her children and noted that she had refrained from making mistakes for seven years, at the time of writing the statement. The Applicant also notes that one of her children, who returned to Mexico, was murdered in 2018.

B. Adverse Factors

The primary adverse factor is the Applicant's criminal history. The record reflects that the Applicant was arrested three times, in [] 2004, [] 2005, and [] 2014, on the same charge of Assault Causes Bodily Injury: Family Member under Texas law. Regarding the first arrest in [] 2004 and the second arrest in [] 2005, the charging documents indicate that the Applicant hit the victim in the head and torso, and the victim was the same person in both instances. While the initial charges from the 2004 and 2005 arrests were ultimately dismissed, the Applicant was subsequently charged with Failure to Identify, as when officers arrived to discuss the [] 2005 incident with her, she provided a false name and date of birth. The Applicant was convicted of Failure to Identify and was sentenced to six days in jail.

In [] 2014, the Applicant was again arrested for Assault Causes Bodily Injury. According to the General Offense Hardcopy from the police department, which the Applicant submitted in response to the Director's RFE, officers arrived on the scene and observed a vertical laceration on the victim, an abrasion, and swollen lump. The victim told the officers that the Applicant "picked up a silver non-motorized scooter . . . and threw it at him," and that the scooter struck the victim, causing them pain. Other witnesses to the incident also noted that the Applicant was using a long black object to strike the victim's vehicle.

The Director noted in their decision that the Applicant was arrested and charged on three occasions for criminal activity similar to that for which she was granted her U nonimmigrant status. The Director also determined that, while the Applicant submitted the 2005 completion of anger management courses, she had not provided any additional evidence that she had made efforts to rehabilitate, outside of her own statements, and as such, concluded that she had not provided sufficient evidence to establish that her adjustment of status was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest.

C. A Favorable Exercise of Discretion is Not Warranted

As previously noted, the Applicant bears the burden of establishing that she merits a favorable exercise of discretion on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. 8 C.F.R. § 245.45(d)(11). Upon de novo review of the record, as supplemented on appeal, the Applicant has not made such a showing.

We have considered the favorable factors in this case. We acknowledge that the Applicant has submitted evidence relating to family unity and humanitarian grounds: she has lived in the United States since 2001 and has family ties in this country—in particular, two United States citizen children. In addition, the Applicant has submitted evidence of employment and supporting letters to indicate that she is hard working and takes care of her children.¹ The Applicant has also accepted responsibility and expressed remorse for the actions that resulted in her arrests for Assault Causes Bodily Injury.

On appeal, the Applicant submits a brief. In her brief, she contends that her criminal history should be given minimal negative weight, as the incidents all occurred nearly a decade ago and all of her assault charges were dismissed. She also cites *In re Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995), in which the Board of Immigration Appeals was hesitant to give substantial weight to an arrest report absent a conviction or corroborating evidence of the allegations contained therein. However, it is “especially appropriate” for us to consider the factual information contained in police reports, as all relevant factors concerning an arrest and conviction should be taken into account in exercising our discretion. *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988). As such, we find no error in the Director’s decision to afford negative weight to the Applicant’s 2004, 2005, and 2014 arrests for assault.

The Applicant’s brief on appeal also claims that all her arrests were due to her victimization and a years-long dispute with a family with which she used to reside, and altercations with former partners who also abused her. We note that the record contains additional incident reports from interactions where others were arrested for assaulting the Applicant but none of those incidents related to the individual who victimized her in 2002, the abuse which resulted in her obtaining her U nonimmigrant status.

Finally, the Applicant asserts that she has demonstrated her rehabilitation because she has not been arrested since 2014, and that during incidents in 2010 and 2011, she removed herself from situations

¹ In response to the Director’s RFE, which requested additional evidence in support of an exercise of discretion, the Applicant submitted several unsigned tax documents, in effort to indicate that she paid taxes in the United States. As these documents were unsigned, and tax transcripts from the Internal Revenue Service were not provided, the Director afforded them minimal weight.

involving the family that was harassing her and cooperated with law enforcement by reporting the incidents.

The Applicant's appeal brief references evidence and documentation that was provided both with her U adjustment application and her U nonimmigrant visa petition. The Applicant only submitted the 2005 certificate of completion of anger management classes but was subsequently arrested in 2014 for assault, which was after she had filed her U nonimmigrant visa petition.² The letters submitted on behalf of the Applicant attesting to her character did not provide any insight or knowledge of the Applicant's arrest or criminal history, or her efforts to rehabilitate. The Applicant's claims on appeal have not established that the Director erred in their assessment of the statements and evidence in the record, and the Applicant has not supplemented the record on appeal. As such, we agree with the Director's determination that the Applicant has not provided sufficient evidence to establish that her adjustment of status is warranted on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, the Applicant has not demonstrated that she merits a favorable exercise of discretion to adjust her status.

III. CONCLUSION

The Applicant has not demonstrated that her 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. Accordingly, the Applicant is ineligible to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.

² The Director also noted that the Applicant submitted a certificate from the [redacted] dated August 23, 2000, for completion of a course called Assault Prevention Level II. The Director noted that this appeared troublesome, as there was nothing in the record to indicate any arrest or interaction with law enforcement prior to her arrest in [redacted] 2004. On appeal, the Applicant has not provided an explanation as to the origin of this certificate or why she was enrolled in this course. Therefore, we agree with the Director that, without explanation, this certificate is viewed as a negative factor.