



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

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

In Re: 25316328

Date: JUNE 6, 2023

Motion on Administrative Appeals Office 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 her “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), concluding that a favorable exercise of discretion was not warranted because the Applicant’s positive and mitigating equities did not outweigh the adverse factors in her case. The Applicant then appealed this decision to us and we summarily dismissed the appeal. We also dismissed a subsequent motion to reconsider.¹ The matter is now before us on a motion to reopen. Upon review, we will dismiss the motion to reopen.

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. A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). If warranted, we may grant a request that satisfies these requirements, then make a new eligibility determination. The applicant bears the burden of establishing their eligibility, section 291 of the Act, 8 U.S.C. § 1361, and must do so by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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).

A favorable exercise of discretion to grant an applicant adjustment of status to that of LPR is generally warranted in the absence of adverse factors and presence of favorable factors. *Matter of Arai*, 13 I&N

¹ In February 2022, we summarily dismissed the Applicant’s appeal, concluding that it “did not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision” as required. 8 C.F.R. § 103.3(a)(1)(v). We noted that the Applicant’s attorney provided a letter in support of her appeal, but did not identify any error of law or incorrect statement of fact in our prior decision. In September 2022, we dismissed the Applicant’s motion to reconsider, concluding that the Applicant did not establish error in our prior decision. 8 C.F.R. § 103.5(a)(3)

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 determinations). However, where adverse factors are present, the applicant may submit evidence establishing mitigating equities. See 8 C.F.R. § 245.24(d)(11) (stating 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 30-year-old native and citizen of Mexico, entered the United States without inspection or admission in March 1997. In October 2014, the Director granted her U-1 nonimmigrant status. The Applicant timely filed the instant U adjustment application in March 2019. In July 2021, the Director issued a decision denying her application, concluding that the Applicant had not established that a favorable exercise of discretion was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. Specifically, the Director determined that the Applicant’s two arrests for driving under the influence of intoxicants (DUI) in [] 2015 and [] 2016 outweighed the positive factors in her case, including her family ties, payment of taxes, vocational training, and efforts at rehabilitation.² The Applicant has not overcome this determination on motion.

On motion to reopen, the Applicant submits a brief and evidence previously submitted in support of the appeal and a declaration from her attorney explaining that they were inadvertently mailed to the Service Center rather than this office. The Applicant argues that reopening the matter to consider this evidence in support of the appeal is warranted, that her positive and mitigating equities outweigh her past DUI history, and that her application for adjustment of status should thus be granted in the exercise of discretion.

The record reflects that the Applicant was arrested for driving under the influence of intoxicants (DUI) in [] Oregon in [] 2015 in violation of section 813.010 of the Oregon Revised Statutes (ORS). According to reports from the [] Police Department, an officer recounted observing the Applicant partially slumped over in the driver’s seat of her car. The officer smelled a strong odor of alcohol emanating from the vehicle, and the Applicant subsequently admitted that she had consumed two beers, and the officer then told the Applicant not to drive. However, he later observed the Applicant driving away without her headlights turned on and contacted another officer to pull her over. A second police officer initiated a stop, noted several signs of possible alcohol intoxication, and administered a breathalyzer test, which indicated a blood alcohol concentration (BAC) of 0.14%. She was cited for DUI and released to a friend. The Applicant was placed on a diversion program, which included a DUI Drug-Free Treatment Program. The charge was subsequently dismissed after she completed the diversion program.

² The Director also determined that the Applicant’s updated Form I-693, Report of Medical Examination and Vaccination Record (medical examination), did not indicate whether she still had a substance abuse problem.

The Applicant was arrested again for DUII in [] 2016 in [] Oregon in violation of section 813.010 of the ORS. In an *Affidavit of Probable Cause* from the [] Circuit Court, an Oregon State Police officer recalled being dispatched to a single vehicle crash involving an impaired driver. Upon arrival, the officer discovered the Applicant's car in a small drainage ditch on the side of the road. The Applicant appeared intoxicated and her speech was slurred. She admitted to consuming several alcoholic beverages, and a subsequent breath test revealed a BAC of 0.16%. The Applicant was cited and released from custody. She failed to appear for a scheduled court date in December 2016, resulting in bench warrant being issued for her arrest. The Applicant eventually pled guilty to DUII. She was sentenced to 10 days in the county jail (time served) and 24 months of supervised probation. Her driver's license was suspended for one year and she was ordered to pay a \$2,355 fine.

Upon review of the record, the evidence and arguments submitted on motion, while relevant, are not sufficient to overcome the discretionary denial of the Applicant's U adjustment application. In considering an applicant's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offense(s). *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978). As noted by the Director, the record indicates that the Applicant was arrested and charged with DUII twice and was convicted in 2016, after having been granted U nonimmigrant status. She failed to appear for a court date related to, and remained on probation as a result of, her second DUI until shortly before the filing of her U adjustment application, requesting to reside permanently in this country as an LPR. While we acknowledge the evidence in the record of the Applicant's family and community ties, employment history, and ongoing rehabilitation efforts, we conclude 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 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"). Under these circumstances, 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 she warrants a positive exercise of our discretion to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The motion to reopen is dismissed.