U.S. Citizenship and Immigration Services

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

In Re: 27062016

Date: JUNE 16, 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 his "U" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant submits a brief and additional evidence.

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, and must do so by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. 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 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 filed a Form I-918, Petition for U Nonimmigrant Status, in 2012, which USCIS approved, according him U-1 nonimmigrant status from October 2013 to October 2017. In March 2017, he filed a U adjustment application, which was denied by the Director in 2018. In April 2019, the Applicant's Form I-539, Application to Extend/Change Nonimmigrant Status was granted, extending his U-1 status to September 2020. In December 2019, he filed the instant U adjustment application.

The Director denied the Applicant's U adjustment application as a matter of discretion, concluding that the adverse factors in his case outweighed the favorable and mitigating equities. Specifically, the Director highlighted that the Applicant's criminal history included 15 arrests or citations, the majority of which involved driving without a license and speeding, reflecting a disregard for U.S. laws and regulations surrounding the safe operation of a vehicle and the inherent risk to public safety. The Director also acknowledged that a 2016 charge levied against the Applicant for assault upon a child was dismissed;[1] however, the Director highlighted that the Applicant did not submit the arrest record or similar documentation that would provide necessary information regarding the Applicant's conduct leading to his arrest.

On appeal, the Applicant asserts that the Director erred by not fully considering all the favorable factors in his case. He concedes that his infractions are adverse factors, but contends that aside from a 1997 DWI conviction,[2] his history consists of minor traffic violations. He further contends that his 2016 assault charge was dismissed because the complaint was based upon false allegations and the complainant refused to testify. In support, he submits the following evidence: (1) court documentation regarding the 2016 assault case, indicating that the "case was dismissed per request of prosecuting witness;" (2) a copy of the police report relating to the 2016 assault case that does not contain a narrative portion and instead contains a notation stating "juvenile information shielded by law;" (3) affidavits from the Applicant's neighbors' attesting to the destructive behavior exhibited by the alleged assault victim; and (4) a copy of a police report filed by the Applicant claiming that the alleged assault victim damaged his two vehicles by slashing his tires.

Upon de novo review, we adopt and affirm the Director's decision with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case.").

[1] The record reflects that in 2016, the Applicant was arrested for assault on a child under 12 in violation of section 14-33(c) of the North Carolina General Statutes (N.C. Gen. Stat.).

[2] The record reflects that in 1997, the Applicant was convicted of driving while impaired in violation of section 20-138.1 of the N.C. Gen. Stat.

The Applicant's primary adverse factor is his criminal and traffic violation history, particularly a 1997 conviction for DWI and a 2016 arrest for assault on a child under 12 in violation of section 14-33(c) of the N.C. Gen. Stat., which was ultimately dismissed.[3]

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. *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978). In this case, a review of the evidence indicates that the Applicant has had several encounters with law enforcement that occurred while he maintained U nonimmigrant status, the most concerning being his 2016 arrest for assault on a minor. We acknowledge that evidence in the record affirms that the Applicant was ultimately not convicted on the assault charge, and although we do not give substantial weight to arrests absent convictions or other corroborating evidence of the allegations, we may properly consider them in our exercise of discretion. *See Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing *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 exercised)); *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995) (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports). Further, the fact that the Applicant was not convicted of the underlying charges, or that the charges were ultimately not sustained by a criminal court, does not equate with a finding that the underlying conduct or behavior leading to those charges did not occur. *See* 8 C.F.R. § 245.24(d)(11) (providing that USCIS "may take into account all factors . . . in making its discretionary determination on the application"). Here, with respect to the Applicant's 2016 assault charge, the Applicant has not provided documentation discussing the circumstances leading up to his arrest. In the absence of additional information or documentation, such as the complete arrest report, which would allow us to properly and fully consider the basis for and specific facts surrounding the Applicant's arrest, we are unable to assess his conduct as it relates to the assault of an alleged minor victim. In addition, the Applicant's DWI conviction and numerous citations for driving without a license and speeding, in upwards of 20MPH over the limit, reflect an ongoing disregard for U.S. laws.

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[3] The Applicant's interactions with law enforcement include the additional arrests and/or citations:

(1) [redacted] 1999 arrest for driving while license is revoked due to impaired driving, for which he paid a fine; [redacted] 2000 citation, subsequently dismissed, for failure to possess an operator's license;
(2) [redacted] 2000 citation for failure to possess an operator's license and speeding 64 miles per hour (MPH) in a 45 MPH zone, for which the Applicant paid a fine for the speeding violation and the operators' license violation was dismissed;
(3) [redacted] 2000 citation for failure to possess an operator's license, speeding 42 MPH in a 25 MPH zone, and possession/presenting a fictitious driver's license, for which the Applicant paid a fine for the speeding violation and the remaining charges were dismissed;
(4) [redacted] 2001 citation for speeding 84 MPH in a 65 MPH zone, for which he paid a fine;
(5) [redacted] 2003 citation, subsequently dismissed, for possessing or displaying a fictitious/altered registration card, certificate of title, or registration plate;
(6) [redacted] 2003 citation for speeding 84 MPH in a 55 MPH zone and driving an unregistered vehicle;
(7) [redacted] 2008 citation for failure to possess an operator's license;
(8) [redacted] 2013 citation for failure to possess an operator's license;
(9) [redacted] 2013 citation, subsequently dismissed, for failure to possess an operator's license;
(10) [redacted] 2014 citation for speeding 48 MPH in a 35 MPH zone;
(11) [redacted] 2018 citation for speeding 52 MPH in a 35 MPH zone; and
(12) [redacted] 2019 citation, subsequently dismissed, for failure yield and failure to possess an operator's license.

We acknowledge and consider the Applicant's favorable and mitigating equities as noted by the Director. However, the Applicant's arguments and evidence submitted on appeal, while relevant, are not sufficient to overcome the discretionary denial of his U adjustment application. In this regard, the Applicant's criminal history, as discussed above, remains a significant adverse factor that continues to outweigh the favorable and mitigating equities the case presents. Accordingly, the Applicant has not established by a preponderance of the evidence that his adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, he has not demonstrated 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.