U.S. Citizenship and Immigration Services

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

In Re: 27034928

Date: JUN. 20, 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 application, concluding that the record did not establish that his adjustment of status was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest, and as such, he had not met his burden of demonstrating that a favorable exercise of discretion was warranted. 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-2 nonimmigrant status in March 2017, as a qualifying family member of a U-1 recipient. He filed his Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application) in July 2020, and the Director denied the application in May 2022. The Applicant then filed combined motions to reopen and reconsider the Director's decision in August 2022, and the Director dismissed these motions in November 2022.

### A. Favorable and Mitigating Equities

In the record below, the Applicant submitted evidence of his favorable equities, which include his two United States citizen children, his history of employment and payment of taxes, and evidence that he is a homeowner. The Applicant also submitted a statement where he expressed remorse for his convictions of driving under the influence and discussed a history of abuse at the hands of his father, who was an alcoholic. In the statement he provided in response to the Director's request for evidence (RFE), he said that he "was driving drunk, [he] wanted to change, and [he] couldn't, [he] tried many times to be a better young man, and [he] couldn't, [his] bad decisions with alcohol only brought [him] problems and debts and all the time [he] looked at the memory of [his] childhood and [his] mistreatments and [he] couldn't leave the alcohol."

He stated that getting married and having a child motivated him to change, noting that his wife helped him and when the statement was written in February 2022 he had "been clean of alcohol for 6 years." The Applicant submitted letters in support from friends and coworkers who stated that he was hard working, reliable, and honest. Finally, the Applicant appears not to have been arrested since his most recent arrest in [redacted] 2016.

### B. Adverse Factors

The Applicant's primary adverse factor is his criminal history. The record reflects that the Applicant, from a period beginning in 2009 and lasting until 2016, was arrested or cited on at least eight occasions. In [redacted] 2007, he was cited for operating a vehicle without a valid license and speeding in violation of Wisconsin law. In [redacted] 2009, he was arrested for operating a vehicle under the influence and hit and run, for which he was convicted of operating a vehicle while intoxicated and pled no contest to a charge of hit and run. The complaint the Applicant provided in response to the RFE reports that the Applicant caused two separate accidents and fled the scene in both instances. The complaint indicates that the victims were able to report the license plate of the vehicle that struck them, and the vehicle was located parked on the side of a road, with the only occupant being the Applicant, sitting in the driver's seat. The complaint states that the officer "immediately smelled a strong odor of intoxicants" and "observed what appeared to be vomit" on the Applicant's shirt. The Applicant paid a fine of $488, was sentenced to 50 days in jail, and his driver's license was revoked for one year.

In [redacted] 2011, he was arrested for operating while his license was revoked, and operating while intoxicated. He plead guilty to a charge of operating while revoked due to alcohol/controlled substance/refusal and was sentenced to pay a $379 fine. In [redacted] 2012, he was arrested for operating a vehicle while intoxicated (2nd), operating with PAC (prohibited alcohol concentration) (2nd),

possession of intoxicants in motor vehicle, operating while revoked, and failure to notify of address change. According to the complaint he submitted in response to the RFE, the Applicant was found in a vehicle that was propped up on a landscape rock, and "passed out" in the car, which was still running with the lights on. The Applicant plead guilty and was convicted on the charge of operating while intoxicated (2nd). He was sentenced to 10 days in jail, his license was revoked for 14 months, and he was ordered to pay a fine of $1172.

In [redacted] 2013, he was arrested or cited for failure to use an ignition interlock device, operating while revoked, operating without insurance, failure to notify DMV of address change, and failure to obey signal. The Director noted that it appeared that the Applicant was convicted of failure to use an ignition interlock device and operating while revoked, but the record was unclear as to the disposition of the charges or completion of sentence, if any was imposed.[1]

In [redacted] 2014, the Applicant was arrested for operating a vehicle while intoxicated (3rd), and he plead guilty. He was sentence to 90 days in jail, his license was revoked for 27 months, he was required to use an ignition interlock device for 27 months and ordered to pay fines and fees of $1946. In [redacted] 2016, the Applicant was arrested for operating a vehicle while intoxicated (4th), operating with PAC, and operating while revoked. The documents related to this case indicate that the charges were dismissed but do not provide a reason. The criminal complaint indicates that the Applicant was found "passed out" in a gas station restroom with vomit on his shirt, and in the interview with police officers, the Applicant stated that he had driven to the gas station. He was transported to the police station where they determined that he had a .21 blood alcohol content.

C. A Favorable Exercise of Discretion is Not Warranted

As previously noted, the Applicant bears the burden of establishing that he merits a favorable exercise of discretion on humanitarian grounds, to ensure family unity, or as 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: he has lived in the United States since 2006 and has family ties in the United States—in particular, two United States citizen children. In addition, the Applicant has maintained steady employment and paid his taxes. Further, letters submitted on the Applicant's behalf indicate that he is hard working, reliable, and honest. The Applicant has also accepted responsibility and expressed remorse for the actions that resulted in his convictions for driving under the influence of alcohol and is committed to moving his life forward.

On appeal, the Applicant argues that the Director's decision placed too much negative weight on misstatements in the record, and on the fact that the Applicant's Form I-693, Report of Medical Examination and Vaccination Record did not indicate whether the Applicant discussed his history with alcohol and driving under the influence with the civil surgeon who completed the examination. Regarding the misstatements in the record highlighted by the Director, the Director discussed a letter

[1] The Director notes a similar outcome for the Applicant's [redacted] 2013 citation or arrest for operating while revoked. The record does not contain disposition documents for this arrest or citation.

provided from J-Q-,[2] a member of a church program, who indicated that the Applicant had relapsed in his recovery in November and December 2016 and had not consumed alcohol up until the writing of the letter in March 2020. In the Applicant's February 2022 statement submitted in response to the RFE, he stated that he had been "clean of alcohol for 6 years." The Director indicated that the Applicant's statements did not align, as the dates in J-Q-'s letter suggested that the Applicant had not consumed alcohol for five years while the Applicant stated it was six years. The Applicant has not attempted to correct the record or explain the difference in time provided in the statements, and only asks us to deem the difference as insignificant. The Applicant contends in his brief that the Director erred in considering his "pattern of unlawful behavior" but failed to give proper weight to the period of seven years since his last arrest.

Regarding the completion of the Form I-693, the Director's dismissal of the motions stated that they did not provide negative weight to the absence of information regarding the Applicant's history with alcohol in their original denial of the U adjustment application. The Director stated that the decision noted the Applicant's acceptance of mistakes and attempts at rehabilitation were positive factors, but they were unable to determine that he had rehabilitated due to the absence of a discussion with the civil surgeon. In his brief on appeal, the Applicant argues that the absence of the information in the medical examination should be viewed positively. We agree with the Director that as there is no indication of a discussion regarding the Applicant's alcohol abuse with the civil surgeon, neither positive nor negative weight can be afforded to his medical examination.

The Applicant further claims that the Director placed too much weight on the absence of "duplicative" documents regarding some of his arrests; however, as noted above, and in the Director's decision on his application and motions, there are several of his arrests or citations for which he did not provide arrest reports or final dispositions. The Applicant states that "traffic only" offenses "add very little to any calculation to rehabilitation or safety" but notes that one of those charges related to his failure to use the ignition interlock device that was ordered following one of his arrests for driving under the influence. As such, we agree with the Director's determination that the absence of these documents weighs negatively against the Applicant.

While the Director's analysis was based on a pattern of criminal behavior, such pattern is not necessary to determine that an applicant poses a threat to public safety. 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 addition, DUIs pose a risk to public safety that is not inherent in other types of offenses. *See Matter of Siniauskas*, 27 I&N Dec. 207, 208 (BIA 2018) (citations omitted) (holding that in a determination of whether a noncitizen is a danger to the community in bond proceedings, driving under the influence is a significant adverse consideration); *Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (A.G. 2019) (discussing the "reckless and dangerous nature of the crime of DUI"). In the Applicant's case, he was charged with operating a vehicle while under the influence on five occasions from 2009 until 2016 and convicted on three occasions. Further, the Applicant continued to drive without a driver's license and ignored the restrictions placed on him by the court, which resulted in multiple citations for operating while revoked and failing to use the ignition interlock device. While the Applicant has not

[2] We use initials to protect the identity of individuals.

had further arrests or charges, the documentation regarding his rehabilitation is insufficient to outweigh the seriousness of his criminal activity.

Finally, the Applicant claims that the Director's used a higher standard than preponderance of the evidence when stating they could not "fully ascertain" whether the Applicant had rehabilitated. However, in our review, the record does not indicate that the Director was using a different standard in assessing whether the Applicant had rehabilitated or established that his U adjustment application warranted a favorable exercise of discretion.

To summarize, due to the Applicant's five arrests and three convictions for driving under the influence, which indicates that he poses a risk to public safety, the Applicant has not established that it is in the public interest to adjust his status to that of an LPR. The Applicant's family ties, steady employment, and expression of remorse, while favorable, are not sufficient to establish that his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the severity of his convictions and arrest history. Consequently, the Applicant has not demonstrated that he merits a favorable exercise of discretion to adjust his status.

## III. CONCLUSION

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

**ORDER:** The appeal is dismissed.