



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

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

In Re: 25573126

Date: MAR. 21, 2023

Appeal of Nebraska Service Center Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant 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 Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. 8 C.F.R. § 103.3. 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.

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 proof to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). This burden includes establishing that discretion should be exercised in an applicant’s favor; USCIS may consider 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, an 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”).

The Applicant filed a Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient, in February 2014, which was approved in July 2017, with validity dates from July 21, 2017, to June 27, 2021. He filed his U adjustment application on April 29, 2021.

The Director denied the Applicant's U adjustment application. The Director acknowledged the positive and mitigating equities present in the Applicant's case, namely his lengthy residence in the United States; his family ties in the country, including his seven children, two of whom are U.S. citizens; and his explanations and expressions of remorse regarding his criminal history. However, the Director concluded that these positive and mitigating equities were outweighed by the adverse factors of his criminal history and that, accordingly, the Applicant had not submitted sufficient evidence to establish that his continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that he warranted a positive exercise of discretion to adjust his status to that of a legal permanent resident (LPR).

The record indicates that, in [] 2018, the Applicant was arrested and charged with one count of domestic assault in the third degree, one count of terrorist threats and two counts of child abuse by neglect. The incident report in the record before the Director provided that the Applicant "took [his wife's] phone by force causing her pain in her left middle finger," and stated that if his wife "ever left him that he would kill [her] and any male she was with." The incident report also indicated that this event was witnessed by two children in the residence. In his personal statement in the record before the Director, the Applicant stated, "I remember that my wife came home from work and was angry with me because I had the music turned up and did not want to stop drinking. I remember that I tried to take the phone from my wife when she called the police." He explained that he was depressed and drinking, because his work permit expired and he lost his job. He stated that he is not sure if he threatened his wife, but if he did, "that was just the alcohol talking." The Applicant pled guilty to and was convicted of domestic assault in the third degree in [] 2018 and sentenced to 65 days of incarceration.

In support of his current appeal, the Applicant submits a brief outlining his positive and negative equities and arguing merits a favorable exercise of discretion. The Applicant contends that the Director afforded too much weight to the [] 2018 offense, his only negative factor, and incorrectly described it as a "serious violent crime." The Applicant argues that his actions of taking away his wife's phone and causing pain in her finger do not rise to the level of a serious violent crime. He highlights his wife's statement indicating that the Applicant has never hit her or threatened her previously.

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. In considering an Applicant's arrest and charge in the exercise of discretion, we look to the "nature, recency, and seriousness" of the crimes. *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978). Here, the Applicant's [] 2018 domestic violence arrest occurred recently, while he was in U status. Further, it is significant that the victim of this violence is a family member—the Applicant's wife—and the offense is the type of behavior the U status seeks to address.¹

¹ The U status is used "to strengthen the ability of law enforcement agencies to investigate and prosecute such crimes as domestic violence . . . while offering protection to alien crime victims in keeping with the humanitarian interests of the United States." Interim Rule, New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53014, 53014 (Sept. 17, 2007).

A review of documentation provided by the Applicant shows that he has multiple additional arrests. On [] 2012, the Applicant was arrested and charged with one count of driving under the influence of alcohol, two counts of operating a motor vehicle with a minor passenger while under the influence of alcohol, one count of operating a motor vehicle without a driver's license, and one count of improper lane change. The Applicant pled guilty to driving under the influence of alcohol and one count of operating a motor vehicle with a minor passenger while under the influence of alcohol. The Applicant was sentenced to six months of probation with the following requirements: pay fines and court costs, complete an alcohol education class, and attend one AA meeting per week. He satisfactorily completed the conditions of his probation and was released from probation in [] 2013. Driving under the influence of alcohol 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 Applicant was arrested again on [] 2012. He was charged with one count of operating a motor vehicle during a period of revocation, one count of driving without proof of insurance, and one count of unlawful display of plates. He pled guilty to operating a motor vehicle during a period of revocation, paid a fine and had his driver's license revoked for one year. The Applicant was arrested on [] 2015. He was charged with one count of operating a motor vehicle during a period of revocation, one count of inoperable head light, and one count of unlawful display of plates. He pled guilty to operating a motor vehicle during a period of revocation and paid a fine. The Applicant was most recently arrested in [] 2019 and charged with one count of operating a motor vehicle during a period of revocation and one count of operating a motor vehicle without valid registration. He pled guilty to operating a motor vehicle during a period of revocation and paid a fine.

It is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. We conclude that the record remains insufficient to establish that the positive equities in the Applicant's case outweigh the negative impact of his criminal history. Here, due to the nature, severity, and recency of the Applicant's [] 2018 arrest for domestic assault while in U status, 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 he warrants a positive exercise of our discretion. Consequently, the Applicant has not established 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.