



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

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

In Re: 25573109

Date: MAR. 31, 2023

Appeal of Nebraska Service Center 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 derivative “U” nonimmigrant status. The Director of the Nebraska Service Center (Director) denied the Form I-485, Application for Adjustment of Status of 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 matter is now before us on appeal. On appeal, the Applicant submits previously submitted evidence, additional evidence and reasserts her eligibility for the benefit sought. The Administrative Appeals Office reviews 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, the appeal will be dismissed.

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. 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 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 native and citizen of Mexico, entered the United States without admission or parole in 2003, when she was three years old. The Applicant’s mother filed a Form I-918, Supplement A, Petition for Qualifying Family Member of U-1 Recipient (U derivative petition), on her behalf and in May 2017, the Director approved the Applicant’s mother’s petition for her derivative U nonimmigrant status. The Applicant filed the instant U adjustment application in April 2021. The Director denied the application, concluding that the Applicant had not demonstrated that her adjustment of status to LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest because her adverse factors, namely her criminal history which occurred while she held U nonimmigrant status, outweighed the positive factors in her case. The Applicant has not overcome this determination on appeal.

A. Favorable and Mitigating Equities

The Applicant is 22 years old and has lived in the United States for more than 19 years. The Applicant’s family ties in the United States include her LPR mother and two U.S. citizen siblings. The Applicant provided evidence of stable employment and sobriety since 2021 and 2022, respectively. The Applicant also submitted letters from family members, teachers, coworkers and friends attesting to her hardworking, caring, and generous nature. Lastly, the Applicant claimed that if she had to return to her home country of Mexico, her LPR mother and U.S. citizen brother who is autistic, would experience hardship without her social and emotional support.

B. Adverse Factors

The Applicant’s primary adverse factor is her extensive criminal history. The record reflects that, in [] 2018, the Applicant was cited in [] County, Wyoming for possession of a controlled substance (plant) 3 ounces or less, in violation of section 35-7-1031(c)(i)(A) of the Wyoming Statutes Annotated (Wyo. Stat. Ann.). In her statement, the Applicant explained that she was charged with misdemeanor possession of marijuana in [] Wyoming when she was 17 years old. She pled guilty to the charge, which was later dismissed in [] 2018 after she completed a juvenile diversion program.

The Applicant was cited in [] 2018 in [] County, Wyoming for driving too closely and a violation of a temporary driver’s permit in violation of sections 31-7-110 and 31-5-210 of the Wyo. Stat. Ann. The Applicant submitted evidence that both charges were dismissed by the prosecutor.

The Applicant was cited in [] 2018 in [] County, Idaho for unlawful possession of alcohol-under 21 years of age in violation of section 23-604 of the Idaho Code Annotated (Idaho Code. Ann.). In her statement, the Applicant explained that she was at a high school party in Idaho where everyone including herself was drinking. She stated that the police were called and searched the house. She was cited for possession of alcohol as a minor and given a ticket. She paid a \$490.50 fine and her case was closed.

The Applicant was cited in [] 2019 in [] County, Idaho for unlawful possession of alcohol-under 21 years of age in violation of section 23-604 of the Idaho Code Ann. In her statement, the Applicant explained that she was traveling in a car with J-J-C-¹, her former partner and two of his friends. A police officer pulled them over, searched the car, and found an open bottle of alcohol in the car. The Applicant received a ticket for a minor in possession of alcohol. She paid a \$487.50 fine and the case was closed.

The Applicant was arrested in [] 2019 in [] County, Wyoming for domestic battery and possession of a controlled substance (plant) 3 ounces or less, in violation of sections 6-2-511(a) and 35-7-1031(c)(i) of the Wyo. Stat. Ann., respectively. In an *Affidavit in Support of Warrantless Arrest*, two deputies from the [] County Sheriff's Office reported being dispatched to a call of a domestic in progress. When they arrived on scene, they observed the driver, J-J-C- with a swollen lip and blood on his face, sweatshirt and pants. J-J-C- told one of the deputies that he and the Applicant were returning from a party when they had a verbal argument. He stated that, at some point during the argument, the Applicant "struck him in the face multiple times with a closed fist causing the injury on his lip." The Applicant was then placed under arrest. She later admitted that she "struck [J-J-C-] 'hard' with her open right hand once" and that marijuana deputies found inside the car belonged to her. In her statement, the Applicant claimed that she said the marijuana belonged to her because J-J-C- had a record and was not supposed to be driving. The Applicant was charged with domestic battery and possession of a controlled substance. She pled guilty to a reduced charge of unlawful contact. She was placed on deferred adjudication and received probation. The charge for possession of a controlled substance was dismissed.

The Applicant was arrested in [] 2020 in [] County, Idaho for possession of a controlled substance and possession of drug paraphernalia in violation of sections 37-2732(c)(3) and 37-2734(a)(1) of the Idaho Code Ann. In her statement, the Applicant explained that she was charged with misdemeanor marijuana possession and paraphernalia possession in Idaho after she made the mistake of visiting J-J-C- at his home in [] Idaho. She stated that she had been sober since December 2019, but relapsed after J-J-C- asked her to smoke with him. The Applicant was charged with possession of a controlled substance and possession of drug paraphernalia. She admitted to "knowingly possess[ing] a controlled substance, marijuana, and paraphernalia, a glass pipe, in [] County, Idaho." She received 12 months' probation.

The Applicant was cited in [] 2021 in [] County, Wyoming for minor under the influence in violation of section 12-6-101(c)(i)(v) of the Wyo. Stat. Ann. In her statement, the Applicant explained that she got into an argument with J-J-C- at a friend's birthday party. She stated that she tried to get into J-J-C-'s car, but he began driving away. According to the Applicant, J-J-C-dragged her along the road knocking her unconscious. She claimed that she was very confused to receive a citation and pled not guilty. She submitted evidence indicating that the charge was dismissed in [] 2021.

The Applicant was arrested in [] 2021 in [] County, Wyoming for domestic battery in violation of section 6-2-511(a) and (b)(i) of the Wyo. Stat. Ann. In an *Affidavit in Support of Warrantless*

¹ Initials are used to protect the individual's privacy.

Arrest, a detective was dispatched to the report of a domestic in progress. The Applicant's stepfather told the detective that he asked the Applicant to return home after her mother began experiencing vaginal bleeding. Upon her arrival, the Applicant became upset and blamed him for causing the bleeding. She then punched him in the face with a closed fist, knocking out two of his front upper teeth. The Applicant's mother corroborated his version of events. The Applicant later confirmed that her stepfather asked her to come home because her mother was not feeling well. She admitted that she became upset when she saw her mother bleeding and accused her stepfather of causing it. She stated that she "smacked [her stepfather] in the face and caused a tooth to come out." She also admitted that her stepfather was not abusive and that she had no proof that he had caused her mother's bleeding. The Applicant was issued a citation for domestic battery. The Applicant submitted evidence that the charge was dismissed in [] 2021.

Finally, the Applicant was cited in [] 2021 in [] County, Idaho for providing false information to a law enforcement officer, unlawful possession of alcohol-under 21 years of age (second offense), possession of drug paraphernalia, public indecency, contributing to the delinquency of a minor, and possession of a controlled substance in violation of sections 18-5413(2), 23-604, 37-2734(a), 20-526, 37-2732(c)(3) of the Idaho Code. Ann. and section 4-1A-1B of the Victor Municipal Code (Victor Mun. Code). In her statement, the Applicant did not address the circumstances that led to this arrest. Instead, she stated that the arrest was a "huge turning point for [her] and low point in [her] life." She added that the arrest opened her eyes and helped her realize that she was hanging out with the wrong people. The Applicant pled guilty to public indecency, providing false information to a law enforcement officer, and unlawful possession of alcohol-under 21 years of age. She was sentenced to 180 days each for counts one and two with 170 days and 176 days suspended, respectively. She received on 24 months' probation and six days' house arrest with an ankle monitor. Additionally, her driver's license was suspended for six months and she was ordered to pay restitution.

The Applicant expressed remorse for her criminal history. She stated that, "[she] sincerely regret[s] [her] inconsiderate actions that led to [her] criminal charges, and apologize[s] for them." She acknowledged that she has hit rock bottom and is now working on being a better person every day. She maintained that her family is the most important thing to her and that "[she] need[s] to prove it to [her]self and [her] mother, show her how [she] can be accountable and take responsibility and change for the better."

C. A Favorable Exercise of Discretion is Not Warranted Based on Humanitarian Grounds, to Ensure Family Unity, or in the Public Interest

On appeal, the Applicant contends that the Director erred "in concluding that [she] submitted insufficient evidence of mitigating circumstances and positive equities to overcome the adverse factors presented by her criminal history." She argues that we should consider that her childhood trauma, age and lack of maturity contributed to her criminal activity, and that she is now rehabilitated and has expressed serious remorse for her past actions. In support of her contention, the Applicant submits a copy of the personal statement that her mother included with her U petition, a copy of her mother's LPR card, psychological assessments for herself and her brother from a licensed clinical social worker, drug testing reports from [] County Probation from [] 2022 to [] 2022, and a copy of an article from Neuropsychiatric Disease and Treatment entitled "Maturation of the adolescent brain."

While we acknowledge the Applicant's additional evidence on appeal, it is insufficient to establish that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. 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). Here, the record indicates that the Applicant was cited or arrested for possession of a controlled substance, unlawful possession of alcoholic beverage-under 21 years of age, unlawful contact, and minor under the influence between 2018 and 2021. Most critically, all of these arrests occurred while the Applicant held U nonimmigrant status. Moreover, the Applicant's [] 2019 and [] 2021 arrests for domestic battery were particularly serious as the victims were her former partner and stepfather. It is of further significance that both victims suffered visible injuries—and involved the type of behavior that U nonimmigrant status seeks to protect against. See 8 C.F.R. §§ 214.14(14)(iii)(a person culpable of the qualifying criminal activity is excluded from being recognized as a victim of such activity and ineligible for U nonimmigrant classification) and 245.24(d)(11)(stating that USCIS may take into account all factors in making its discretionary determination and that it "will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of" certain classes of crimes). See also Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007) ("In passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence . . . while offering protection to victims of such crimes."). As the Director noted, the Applicant's own admission that she struck her former partner "hard with her open right hand once" and "smacked [her stepfather] in the face and caused a tooth to come out" reflects problematic behavior and indicates a serious risk to the personal and public safety of others. Further highlighting the seriousness of the Applicant's criminal history, the record indicates, and she expressly acknowledges, multiple arrests for possession of a controlled substance and related arrests and convictions, and USCIS "will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of . . . multiple drug-related crimes, or where there are security- or terrorism-related concerns." 8 C.F.R. § 245.24(d)(11).

In sum, we acknowledge the Applicant's positive and mitigating equities including evidence of her childhood trauma, PTSD diagnosis and close relationship with her LPR mother and U.S. citizen siblings submitted on appeal. Nonetheless, in light of the nature, recency and seriousness of the Applicant's criminal history, we agree with the Director that 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. The application will remain denied.

ORDER: The appeal is dismissed.