



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

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

In Re: 26425614

Date: MAY 10, 2023

Appeal of Vermont 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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

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 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”).

II. ANALYSIS

The Applicant is a citizen of Mexico who last entered the United States without inspection in 1998. In April 2017, the Director granted the Applicant U-1 nonimmigrant status with validity from April 5, 2017, through April 4, 2020.¹ The Applicant timely filed the instant U adjustment application in April 2020.

The Director denied the application in October 2022. The Director acknowledged the positive and mitigating equities present in the Applicant's case: his lengthy residence and employment in the United States and his LPR spouse and U.S. citizen son. It is unclear whether the Director considered the numerous letters of support from the Applicant's family, friends, employers, and coworkers, that described him as a hard-working, responsible, respectful, and kind human being. However, the Director highlighted the Applicant's [redacted] 2019 arrest for domestic assault that resulted in a conviction for disorderly conduct. The Director acknowledged both the Applicant's statement of remorse and attendance at a domestic violence class but emphasized the seriousness of domestic violence and the Applicant's disregard for the laws of the United States; that Applicant did not submit evidence to show that he attended any classes; that he did not submit any evidence to show that he completed his probation that was set to expire in April 2022. As a result, the Director found that the favorable and mitigating equities in the Applicant's case did not outweigh the adverse factors and, accordingly, he did not establish that his adjustment of status was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest.

On appeal, the Applicant provides a letter from [redacted] indicating that he successfully completed the Latinos Ending Abuse Program, including fifteen group sessions and a final evaluation exit interview. The Applicant also provided a Register of Actions showing that he was discharged from probation on April 30, 2022. The Applicant also provides further documentation of his positive equities, including an updated personal statement and additional letters of support from family members and friends.

The record shows that the Director considered evidence of rehabilitation to be a vital in determining whether the Applicant warranted a favorable exercise of discretion, given the nature of the offense, and that his failure to provide documentation supporting his claim of rehabilitation and completion of probation was a significant negative factor. While the Applicant has submitted this evidence on appeal, the Director has not had the opportunity to consider it. As the Director's denial was largely due to the Applicant's failure to provide documentary evidence of rehabilitation, we remand the matter to the Director to consider the Applicant's claim in the first instance.

III. CONCLUSION

The record on appeal includes additional evidence directly related to the issues that significantly informed the Director's discretionary determination. Accordingly, we will remand the matter to the Director for the issuance of a new decision and reconsideration of whether the Applicant has met her burden of establishing that a favorable exercise of discretion is warranted.

¹ The Applicant had been placed on a waiting list for U nonimmigrant status in July 2015 as the statutory cap for U-1 nonimmigrant status had been reached.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.