



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

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

In Re: 21736500

Date: APR. 28, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of a U Nonimmigrant

The Applicant seeks to adjust her status to that of 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 “U” nonimmigrant status. The Director of the Vermont Service Center denied the Applicant’s Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. 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. 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 1 *USCIS Policy Manual* E.8(C)(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 should 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 citizen of Mexico, filed her Form I-918, Supplement A, Petition for Qualifying Family Member of a U-1 Recipient, in May 2011, and it was approved in March 2012. The Applicant was granted U nonimmigrant status until March 2016. The Applicant filed the instant U adjustment application in March 2016. The Director denied the application, determining that the Applicant had not sufficiently addressed adverse factors contained within an Investigative Report issued by Immigration and Customs Enforcement (ICE) and, as a result, she had not demonstrated that her adjustment of status to that of an LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. The Director further noted that the Applicant had not submitted a current, valid Form I-693, Report of Medical Examination and Vaccination Record. While the Applicant has submitted a new Form I-693 with her appeal, she has not overcome the Director's discretionary determination.

A. Positive and Mitigating Equities

The Applicant is 50 years old and has lived in the United States for approximately 29 years. The Applicant's family ties in the United States include her six children, three of which are minors and reside with her, and for whom she states she is the sole caretaker, as well as her nephew, who also lives with them. With her U adjustment application, the Applicant submitted copies of tax documents, and stated that she relies on financial support from her oldest son. On appeal, the Applicant states that she has no criminal history, and maintains that she was not involved, "with others producing false or fraudulent documents in or around 2003 or at any time while living in [REDACTED] New Mexico." The Applicant also submits new letters of support from members of her community, and organizations with which she is involved, attesting to her character, as well as school and medical records for some of her children. The Applicant further submits copies of her General Education Development completion, as well as her own educational records and employment training certificates.

B. Adverse Factors

The Applicant's primary adverse factor relates to an Investigation Report produced by ICE. The contents of this investigation report were provided to the Applicant, in the form of a Request for Additional Evidence, issued by the Director in June 2020. The investigation report discusses a period in [REDACTED] 2003, in which ICE agents worked with a confidential informant who claimed he was able to obtain fraudulent Form I-551, Permanent Resident Cards (PRC), driver's licenses, and Social Security cards. This informant told the agents that he was able to obtain these documents through the Applicant, who had claimed that her sister worked for the California [REDACTED] and could assist with obtaining driver's licenses. During this investigation, the informant was told to go to a specific address to drop off the photographs that would be used in the production of fraudulent documents.¹ An ICE agent accompanied the informant to the address provided to conduct surveillance. After this meeting, the informant stated that the Applicant

¹ As noted in the Director's RFE and decision, this was an address previously provided by the Applicant as her residence. The Applicant has not provided an explanation for why, if she was not involved with this scheme, her address is frequently noted in the ICE Investigation Report.

came to his house and used the informant's telephone to call her sister in California, and her mother in [REDACTED]. After the visit to the informant's home, the ICE agents obtained a subpoena to determine the real user of the phone number provided to them by the informant, which the informant had been calling in conducting transactions for the documents. The subpoena returned the name and address of the Applicant. The address included as related to this phone number has been supplied by the Applicant to USCIS on multiple forms, including on her U nonimmigrant petition. The ICE agents also searched a license plate for a vehicle that the Applicant was using, and noted that the vehicle was registered to E-R-, who appears to be the Applicant's sister.² The informant further provided the ICE agents with the addresses where the fraudulent documents were being handled, one of which belonged to E-R-, in [REDACTED] California, where the Applicant claims her sister had been residing, and the other belonged to the Applicant. At this point, the informant reached out to the Applicant to inquire about the source of the fraudulent documents. The Applicant told the informant that she "will deal with the producer and . . . get the documents," and stated that, "the producer only wanted to deal with her." The informant asked if the Applicant would be able to produce documents for 4 or 5 individuals, and the Applicant stated that, "it could be done, it would not be a problem." The informant provided the ICE agents the actual PRC that was being used by the Applicant, as the Applicant told the informant that it could be shown to "potential buyers." The ICE agents inquired in agency systems and found that the Alien number on the PRC did not belong to the Applicant, or the name indicated on the PRC. The investigation report continues with the ICE agents providing the information for all the documents they procured and noting that none of the documents were genuine or legitimate. Additional corroborating statements in the investigative report that the Applicant was involved includes the reporting of the Applicant's partner and father of her children as being involved with procuring false birth certificates and PRCs. The report included the name E-M-, who the Applicant identified previously as being her former partner and father of two of her children.

On appeal, the Applicant submits a statement similar to that previously in the record. In the updated statement, she continues to deny knowledge of any scheme to obtain fraudulent documents; however, she does not substantively address any of the allegations, especially regarding how the informant had her name, phone number, or addresses which have been included on the Applicant's various forms submitted to USCIS. The Applicant further states, "my sister who I lived with in California . . . who is now a citizen has agreed to provide any further information regarding her work history to corroborate that she has never worked at the California [REDACTED] and instead has worked with the public schools for many years." However, despite this statement, the Applicant has not submitted any evidence or statements from the Applicant's sister denying either involvement in such scheme, or employment with the California [REDACTED].

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

The Applicant bears the burden of establishing that she merits a favorable exercise of discretion on humanitarian grounds, to ensure family unity, or is 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.

² We use initials to protect the identity of individuals.

We have considered the favorable factors in this case. We acknowledge the Applicant's residence in the United States, family ties, history of education, some evidence of payment of taxes, and involvement in her community. However, notwithstanding these factors, the Applicant has not demonstrated that she merits a favorable exercise of discretion to adjust her status to that of an LPR.

In her brief on appeal, the Applicant argues that the Director's June 2020 RFE was "insufficient to allow [her] a meaningful opportunity of rebuttal." However, we find that the June 2020 RFE was detailed and provided an accurate account of the information contained in the ICE Investigation Report. We also note that the Applicant did not provide any response to the June 2020 RFE. Instead, the Applicant claims that she previously submitted statements denying the allegations, and that, without more information about the investigation, such as the name of the confidential informant or copies of the evidence the ICE agents obtained, "there was little more [she] could do." She also claims, "[a]lmost all of the factual allegations contained in the summary do not in themselves indicate any wrongdoing;" however, we do not agree. The report, as summarized here, in the Director's RFE, and decision, indicate that the Applicant, specifically, was accepting money in exchange for obtaining fraudulently produced identification documents.

The Applicant further argues that the Director's decision erred in relying on the ICE Investigation Report alone for the denial of her U adjustment application and maintains that she has had background checks and does not otherwise have any criminal record. However, USCIS may take into account *all relevant factors* in making its discretionary determination. 8 C.F.R. § 245.24(d)(11) (emphasis added). Additionally, reliance on an investigation report in adjudicating discretionary relief—even in the absence of a criminal conviction—is permissible provided that the report is inherently reliable and its use is not fundamentally unfair. *See e.g., Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) ("[T]he admission into the record of . . . information contained in the police reports is especially appropriate in cases involving discretionary relief . . . , where all relevant factors . . . should be considered to determine whether an [applicant] warrants a favorable exercise of discretion."). Therefore, the Director did not err when giving the investigation report substantial weight in the discretionary analysis. The Director confronted the Applicant with the adverse information in the investigation report and found that the Applicant had not provided a substantive rebuttal to the allegations against her. An applicant must establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. As the Applicant has not provided either evidence indicating that she was not involved with the scheme laid out in the investigation report, or substantive statements addressing the allegations in detail, we agree with the Director that she has not met each eligibility requirement of her U adjustment application by a preponderance of the evidence.

Finally, the Director noted that the Applicant may have been inadmissible under 212(a)(6)(C)(i) of the Act for obtaining a visa or other documentation by fraud or willful misrepresentation of a material fact, an inadmissibility ground that was not waived with the Applicant's approved Form I-192, Application for Advanced Permission to Enter as a Nonimmigrant. The investigation report indicated that throughout the investigation, the Applicant was using a fraudulent PRC under the name N-F-, which the ICE agents confirmed did not belong to the Applicant, or the name indicated on the PRC. The Applicant, in her statements previously on the record and again on appeal, does not refute or address this allegation. As a result, we find that the Applicant committed fraud or willful misrepresentation of a material fact in using and obtaining a false Permanent Resident Card. This

inadmissibility ground was not waived at the time of the approval of the Applicant's U nonimmigrant petition, and as such, the Applicant has not shown that she was "admitted into the United States... under section 101(a)(15)(U)" of the Act or that she was "lawfully admitted to the United States as a [U nonimmigrant] as required by 8 C.F.R. § 245.24(b)(2)(i) and she is therefore ineligible for adjustment of status for this additional reason.

III. CONCLUSION

To summarize, as the Applicant has not provided a substantive rebuttal to the allegations in the ICE Investigation Report, she has not established that it is in the public interest to adjust her status to that of an LPR. The Applicant's family ties, lengthy residence in the United States, employment history, payment of taxes, and involvement in her community, while favorable, are not sufficient to establish that her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Furthermore, the Applicant has not shown that she was lawfully admitted as a U nonimmigrant as required by the regulations. Consequently, the Applicant has not demonstrated that she is eligible to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.