



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

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

In Re: 23399104

Date: DEC. 06, 2022

Appeal of Vermont 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 “U” nonimmigrant status. The Director of the Vermont 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. On appeal, the Applicant submits a brief and additional evidence. 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, 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 was granted U nonimmigrant status from October 2013 to October 2017. In December 2016, she filed the instant U adjustment application. In July 2017, the Director issued a request for evidence (RFE) seeking arrest reports and court documentation regarding the conviction status for each of the Applicant's arrests. In October 2017, the Applicant submitted, inter alia, a personal affidavit providing details of her arrests/citations, an affidavit from her mother, documentation from her therapist, and a letter from her probation officer regarding the Applicant's compliance with court orders. The Director concluded that the Applicant had not submitted sufficient evidence to establish that her continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that she warranted adjustment of status to that of an LPR as a matter of discretion.

A. Favorable Factors

The Director acknowledged the following favorable factors present in the Applicant's case: her experience growing up in a household with an abusive father; her lengthy residence in the United States; her family ties in the country, particularly her brother, the U visa principal petitioner, and LPR mother; hardship to her and her family if she is returned to El Salvador; academic progress in school and future academic ambitions; regret for her actions; and compliance with the terms of her probation. The Director also acknowledged the statements from the Applicant, her family members, therapist, and probation officer regarding the Applicant's rehabilitative efforts.

B. Adverse Factors

The Applicant's primary adverse factor is her juvenile offense and criminal history, specifically multiple juvenile offenses, all committed shortly before or while she was in U nonimmigrant status. The Applicant's criminal history includes the following: (1) a 2012 citation for battery on a school employee – in her affidavit, the Applicant asserted that she pushed a school aide because she believed that the aide was harassing her; (2) a 2014 citation for battery on a person – in her affidavit, the Applicant asserted that she hit a classmate who was bullying her; (3) a 2015 arrest for assault by means of force likely to produce great bodily injury – in her affidavit, the Applicant asserted that she punched and kicked a former friend who was harassing her family, which resulted in her being placed in juvenile detention for approximately two months; (4) an [] 2016 citation for failure to obey a juvenile court order – in her affidavit, the Applicant asserted that the citation was for a curfew violation; and (5) a [] 2016 citation for battery on a person – in her affidavit, the Applicant asserted that she got into a fight with her brother's girlfriend.

In denying the application, the Director noted that the Applicant was arrested four times for battery against another person, placing the victims' safety at risk, and the Applicant did not provide the requested arrest reports or court documentation providing details about these incidents. The Director also highlighted that the Applicant was still on probation for her actions, and as such, her behavior was subject to court scrutiny, and USCIS could not make a determination as to her future behavior once the court's restrictions were removed.

C. A Favorable Exercise of Discretion is Not Warranted on Humanitarian Grounds, to Ensure Family Unity, or Otherwise 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 as otherwise in the public interest. 8 C.F.R. § 245.45(d)(11). Upon a careful review of the entire record, including the new evidence submitted on appeal, the Applicant has not met her burden of establishing that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

On appeal, the Applicant asserts that the Director erred in denying her application because the submitted evidence demonstrated that she was a child exposed to domestic violence which has a traumatic effect on children's behavior; she received therapy to address the effects of domestic violence in her life; she is remorseful about the mistakes of her past and has been rehabilitated; her probation was terminated in [REDACTED] 2017; and her arrests occurred when she was between 13 and 16 years old, and as she has matured, her behavior has changed and improved. She further asserts that due to California's privacy laws protecting juvenile offenders, she was previously unable to obtain any of her criminal records.

With the appeal, the Applicant submits court documentation regarding her 2015 assault offense and 2016 battery offense. The charging document and minute order for the 2015 offense indicates that in [REDACTED] 2015, the Applicant, at age 16 years, committed "assault by means of force likely to produce great bodily injury in violation of section 245(a)(4) the California Penal Code (Cal. Penal Code)," and following the incident, she was placed in juvenile detention. The minute order, dated [REDACTED] 2016, indicates that the Applicant's offense was a felony, and following her detention, she was placed on home probation. The charging document for the 2016 battery case indicates that in [REDACTED] 2016, the Applicant committed "battery, simple, in violation of section 242/243(a) the Cal. Penal Code, a misdemeanor." The charging document indicates that the Applicant was not detained for this offense.

We acknowledge that all of the Applicant's offenses occurred while she was a minor, and adjudication of youthful offender status or juvenile delinquency is not a criminal conviction under the immigration laws. *Matter of Devison-Charles*, 22 I&N Dec. 1362, 1373 (BIA 2000). However, all relevant factors are considered in assessing an applicant's eligibility for adjustment of status as matter of discretion. 8 C.F.R. § 245.24(d)(11). Juvenile offenses and the circumstances surrounding them are factors relevant to the determination of whether a favorable exercise of discretion is warranted. See *Castro-Saravia v. Ashcroft*, 122 Fed. Appx. 303, 304-05 (9th Cir. 2004) (concluding that *Matter of Devison* does not preclude consideration of juvenile delinquency when making a discretionary determination); see generally *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996) (including, in adverse factors relevant to discretionary relief, "the presence of other evidence indicative of an [applicant's] bad character or undesirability as a permanent resident"). Accordingly, on appeal, we have considered the full scope of the Applicant's history of juvenile offenses.

In addition, when 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). We acknowledge the Applicant's affidavit providing details regarding her offenses; however, without the arrest/citation reports or other court documentation

providing the details of the offenses, the circumstances regarding the offenses remain unclear and the Applicant's criminal history, including three battery offenses and an assault offense, involving the use of force likely to produce great bodily injury, shows a concerning pattern of behavior. In the absence of additional information or documentation which would allow us to properly and fully consider the basis for and specific facts surrounding the Applicant's arrests, such as the underlying arrest report and records or transcripts documenting her subsequent criminal proceedings, there is insufficient evidence to establish that her criminal history and the charges levied against her should not be considered as adverse factors in her case or, alternatively, that lesser weight should be accorded to such evidence. Based on the foregoing, the Applicant's criminal history, occurring shortly before obtaining or while she maintained U nonimmigrant status, is a serious adverse factor weighing against a favorable exercise of discretion.

In the end, we acknowledge and consider the Applicant's favorable factors as reflected in the record. However, the Applicant's criminal history, as discussed above, remains a significant adverse factor that continues to outweigh the favorable factors the case presents. Accordingly, the Applicant has not established by a preponderance of the evidence that her adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, she 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.