



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

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

In Re: 17201999

Date: JANUARY 28, 2022

Motion on Administrative Appeals Office 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 as a qualifying family member of a victim of qualifying criminal activity. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), and we dismissed the Applicant’s subsequent appeal. The matter is now before us on a motion to reopen. On motion, the Applicant submits additional evidence and reasserts his eligibility. Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2).

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

Both the Director and this office have laid out the facts of this case, and we incorporate them here by reference. The record reflects that the Applicant’s criminal history includes the following: a 2011 arrest for possession of marijuana and possession of alcohol by a minor; a 2013 conviction for felony battery, felony theft, and misdemeanor battery resulting in bodily injury – with one of the victims identified as a female police officer; and a 2015 arrest warrant in relation to the Applicant’s testing positive to tetrahydrocannabinol (THC) and benzodiazepines. The Director denied the application, determining that the Applicant had not demonstrated that his adjustment of status to that of an LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest due to the recency and violent nature of his 2013 offense as well as lack of documentation regarding the circumstances of his arrests.

On appeal, we concluded that despite evidence of numerous equities in his favor, the Applicant had not satisfied his burden of establishing that he warrants adjustment of status to that of an LPR as a matter of discretion due to the violent and serious nature of his 2013 offense, which occurred while he was in U status, and lack of arrest reports which prevented us from fully understanding the underlying circumstances of his offenses. In addition, we noted that the Applicant’s eventual completion of his sentence occurred after multiple probation violations, including a violation related to a positive test for THC and benzodiazepines. We further highlighted that the Applicant’s account of his 2013 offense was inconsistent with the documentation in the record which prevented us from determining the extent to which the Applicant has been forthcoming with USCIS and accepted responsibility for his actions, which is an important consideration in making a discretionary determination.

On motion, the Applicant submits a brief and police records for his 2011 and 2013 arrests in order to complete the record and address concerns raised in our prior decision regarding inconsistencies between his account of his 2013 arrest and court documentation. The case report relating to the Applicant’s 2013 arrest indicates the following: T-D-¹ an off-duty police officer, observed a loss prevention security guard in Walmart chasing the Applicant, a shoplifting suspect. Subsequently, T-D- pursued the Applicant, and as she approached him, she identified herself as a police officer and advised him that he was being detained for theft. T-D- indicated that the Applicant tried to run away so she grabbed him, and he responded by pushing her and wrestling with her. T-D- continued to try and subdue the Applicant and advised him to stop resisting arrest, and the Applicant eventually threw her to the ground. T-D- reported to responding patrol officers that she was assaulted during the incident and needed medical attention due to injuries to her elbow, right arm, and neck. The Applicant also resisted arrest when a responding officer attempted to arrest him.

As an initial matter, the evidence submitted on motion does not resolve the inconsistency in the record regarding the circumstances of the Applicant’s 2013 arrest.² We also note, as stated above, that the

¹ We use initials to protect privacy.

² In his written statements, the Applicant explained that he was in Walmart and did not have money to purchase

lack of arrest documentation was not the sole reason for dismissing his appeal. In our dismissal, we determined that the Applicant did not satisfy his burden of establishing that he warrants adjustment of status due to the violent and serious nature of his [] 2013 offense as well as multiple probation violations, including a violation related to a positive test for THC and benzodiazepines. Further, the fact remains that the Applicant pleaded guilty to felony battery, felony theft, and misdemeanor battery resulting in bodily injury, where one of the victims was a police officer. Based on the foregoing, the Applicant has not overcome the basis for our dismissal as the Applicant's criminal history continues to outweigh the positive and mitigating equities in the case.

III. CONCLUSION

While the Applicant submitted new evidence, he has not provided documentary evidence of new facts sufficient to establish his eligibility. Therefore, the Applicant has not demonstrated that he is eligible on motion to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The motion to reopen is dismissed.

headphones. The Applicant stated that he took the headphones without paying and as he was walking through the doors, the alarm went off. The Applicant explained that he got nervous and threw the headphones back into Walmart and tried to walk away quickly. As he was leaving, a woman approached him and asked for directions to another store. The Applicant stated that he pointed her in the direction of the store, but she got closer to him and stated that she did not hear him. The Applicant further explained that the woman held on to his hand tightly and that when he tried to get away from her, she fell forward. The Applicant stated that he did not know she was a police officer based on her appearance. The Applicant stated that another police officer then told him he had assaulted a female police officer, tackled him to the ground, and arrested him.