U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17186204

Date: JANUARY 31, 2022

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 Vermont Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (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 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, the 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's mother filed a Form I-918 Supplement A, Petition for Qualifying Member of U-1 Nonimmigrant (U petition), on his behalf, which USCIS approved, according him derivative U-3 nonimmigrant status from October 2014 to September 2018. In October 2017, he filed the instant U adjustment application.

Through a request for evidence (RFE), the Director informed the Applicant that the record did not contain documents related to his encounters with law enforcement and requested the arrest reports and records or transcripts pertaining to his criminal proceedings as well as evidence supporting a favorable exercise of discretion. In response to the RFE, the Applicant submitted a personal affidavit, charging and disposition documentation, and support letters from relatives and employers. The Director denied the application, determining that the because the Applicant did not submit the proper documentation as requested in the RFE, notably his arrest reports, USCIS was unable to reach a favorable decision on his adjustment application. This appeal followed

A. Adverse Factors

The Applicant's primary adverse factor is his criminal history, which includes: (1) a 1991 arrest for assault with a deadly weapon in violation of California Penal Code (Cal. Penal Code) section 245(A)(1) — the felony complaint indicates that the weapon was a glass bottle; (2) a 1992 conviction for infliction of corporal punishment on a cohabitant/spouse in violation of Cal. Penal Code section 273.5(A) — the Applicant was initially also charged for assault with a deadly weapon in violation of Cal. Penal Code section 245(A)(1); (3) a 2000 conviction for food stamp fraud in violation of California Welfare and Institutions Code section 10980(C)(2); (4) a 2003 conviction for appropriation of lost property in violation of Cal. Penal Code section 485; and (5) a 2013 arrest for driving under the influence of alcohol (DUI) of in violation California Vehicle Code (Cal. Veh. Code) section 23152(a), misdemeanor hit and run in violation of Cal. Veh. Code 20002, driving without a valid driver's license in violation of Cal. Veh. Code section 125000(A) as well as a sentence enhancement pursuant to Cal. Veh. Code section 23578 for concentration of alcohol in the person's blood of 0.15 percent or more.

B. Positive and Mitigating Equities

The Director did not address the positive equities present in the Applicant's case. Upon de novo review of the record, we find that the Applicant's positive and mitigating equities include his lengthy residence in the United States; family ties in the country, namely his spouse and four children, three of whom are U.S. citizens; hardship to his family if he is returned to Mexico; and his employment history and payment of taxes in the United States.

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 he merits a favorable exercise of discretion on humanitarian grounds, to ensure family unity, or as otherwise in the public interest. 8 C.F.R. § 245.24(d)(11). On appeal, the Applicant contends that he has met his evidentiary burden by

providing a statement detailing the circumstances of each arrest[1] and all available police and court records, including: (1) the charging document and court disposition for his 1991 arrest; (2) a copy of the California Department of Justice Records check indicating that he was convicted of infliction of corporal punishment in 1992 and a "No Record" letter indicating that records relating to this conviction were discarded pursuant to California's record retention and destruction laws; and (3) the police report and criminal documents from his 2013 DUI arrest. The Applicant argues that his arrests that did not result in convictions should not be held against him, and he maintains his innocence with respect to the charges. The Applicant also contends that his last conviction occurred in 2003 and he has demonstrated rehabilitation since that time.

We have considered the positive and mitigating equities factors in this case, and we acknowledge and consider the evidence the Applicant submitted relating to family unity and humanitarian grounds as well as documentation pertaining to his criminal history records. However, the positive and mitigating equities do not outweigh the Applicant's criminal history. 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, amongst other arrests and convictions, the Applicant has a 1992 conviction for infliction of corporal punishment on a cohabitant/spouse, a 1991 arrest for assault with a deadly weapon, and a 2013 arrest for DUI and misdemeanor hit and run, all of which are serious crimes that weigh against a favorable exercise of discretion.

We acknowledge that evidence in the record affirms that several of the charges against the Applicant were ultimately dismissed in his favor, including the charges for DUI and hit and run. However, the fact that the Applicant was not convicted of the underlying charges, or that the charges were ultimately not sustained by a criminal court, does not equate with a finding that the underlying conduct or behavior leading to those charges did not occur. See 8 C.F.R. § 245.24(d)(11) (providing that USCIS "may take into account all factors . . . in making its discretionary determination on the application"). Such factors can include evidence of behavior and criminal conduct that does not result in a conviction, as well as information taken from police reports and similar documents. See Matter of Thomas, 21 I&N Dec. 20 (BIA 1995) (holding that evidence of criminal conduct that has not culminated in a final conviction may nonetheless be considered in discretionary determinations); see also 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."). Here, evidence in the record indicates that in 2013, the Applicant was arrested on suspicion of DUI after he was involved in a motor vehicle accident and fled the scene. Although the Applicant maintains his innocence for these crimes, he has not described in detail the circumstances leading to his arrest and the evidence submitted does not provide the reasons why the charges against him were ultimately dismissed.

We further note that criminal documentation in the record relating to his 1992 conviction indicates, and the Applicant acknowledges, that he used physical force against the victim and pled guilty to and

[1] The Applicant states that in 1991, he got into an argument with his roommate who brandished a knife, and he responded by throwing a bottle of beer at the roommate; in 1992, he was arrested for domestic violence because he slapped his girlfriend in the face upon finding her in their home with another man; and in 2013, he was arrested for DUI but he believed that he was innocent and successfully fought the charges.

was convicted of domestic violence. Of further significance, the evidence in the record indicates that the victim was the Applicant's partner, and his conduct and related conviction concerns the very type of behavior that U nonimmigrant status seeks to protect against. See section 101(a)(15)(U)(iii) and 8 C.F.R. § 214.14(a)(9) (including, as qualifying criminal activity, "domestic violence"); 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."). Further, DUIs pose a risk to public safety that is not inherent in other types of offenses and are serious adverse factors in discretionary determinations. See Matter of Siniauskas, 27 I&N Dec. 207, 208 (BIA 2018) (citations omitted) (holding that in a determination of whether an alien is a danger to the community in bond proceedings, driving under the influence is a significant adverse consideration); Matter of Castillo-Perez, 27 I&N Dec. 664, 671 (A.G. 2019) (discussing the "reckless and dangerous nature of the crime of DUI"). In the end, after considering the positive and mitigating equities in the record, the Applicant's criminal history, including a domestic violence conviction, convictions for food stamp fraud and appropriation of lost property, and a recent DUI arrest, remains a significant adverse factor that continues to outweigh the positive and mitigating equities the case presents.

Based on the foregoing, the Applicant has not established by a preponderance of the evidence that his adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, he has not demonstrated that he is eligible to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.