U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17742395

Date: MARCH 1, 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 her "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, a citizen of Mexico, was approved for U-1 nonimmigrant status from October 2013, until October 2017. In October 2017, she filed the instant U adjustment application.

Through a request for evidence (RFE), the Director informed the Applicant that the record did not contain sufficient documentation of her encounters with law enforcement and requested the arrest reports and records or transcripts pertaining to her criminal proceedings as well as evidence supporting a favorable exercise of discretion. In response to the RFE, the Applicant submitted additional evidence, including but not limited to, a personal affidavit, charging and disposition documentation, a psychological evaluation, substance abuse treatment reports, and support letters from relatives and employers. The Director determined that because the Applicant failed to provide the requested arrest reports, the record was unclear about the circumstances of her arrests, and the adverse factor of her criminal history, comprised of repeated arrests for driving under the influence of alcohol (DUI) which indicate a continuing threat to the public safety, was not outweighed by positive and mitigating equities in the record.

A. Adverse Factors

The Applicant's primary adverse factor is her criminal history, which includes: (1) an [redacted] 2014 arrest for DUI in violation of Revised Code of Washington (Wash. Rev. Code Ann.) section 46.61.502 and reckless endangerment in violation of Wash. Rev. Code Ann. section 9A.36050 – in [redacted] 2014, she was sentenced to 364 days in jail with 361 days suspended, alcohol treatment, and two years' probation – she remained on probation until [redacted] 2019; and (2) a [redacted] 2014 arrest for DUI in violation of Wash. Rev. Code Ann. section 46.61.502 and driving with a suspended license in violation of Wash. Rev. Code Ann. section 46.20.342.1. For this arrest, the Applicant was granted deferred prosecution and sentenced to 30 days in jail and 30 days to be served through electronic home monitoring; ordered to complete a two-year treatment program; placed on active probation for five years, during which she was required to attend two Alcoholics Anonymous (AA) meetings per week and maintain an ignition interlock on her vehicle. She remained on probation for this offense until [redacted] 2020.

B. Positive and Mitigating Equities

The Director acknowledged the Applicant's positive and mitigating equities including her lengthy residence in the United States; family ties in the country, particularly her U.S. citizen minor child; hardship to her family if she is returned to Mexico; her employment history and payment of taxes in the United States; and the victimization and trauma she experienced as a result of the qualifying crime.

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. § 245.24(d)(11). On appeal, the Applicant asserts that the Director misinterpreted the standard set forth in 8 C.F.R. § 245.24(d)(11) which requires USCIS to consider both the negative and positive factors in deciding whether discretion is merited. She argues that the Director focused solely on her negative criminal history and failed to consider all evidence in the record, including evidence that she does not suffer from alcohol dependence, is an active member of the alcoholic's recovery community, is unlikely to reoffend, and is a healthy, contributing member of society who is loved and needed by her family. She also argues that the Director erred in interpreting the nature, recency, and seriousness of her criminal history by failing to consider that her criminal history is directly linked to having been a victim of childhood sexual assault and domestic violence. She asserts that she made two very bad choices over the course of a four-month period which was a tremendously stressful time in her life as she was a single mother to her young child, caught in a cycle of domestic violence, and caring for her substantially medically disabled parents. She further asserts that, as a result of having no emotional support, she turned to alcohol to cope with the stress, and she takes full responsibility and appreciates the gravity of her conduct.

As noted above, 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). In this case, the Applicant, while she maintained U nonimmigrant status, was arrested for DUI on two occasions. She was convicted for the first offense and was granted deferred adjudications for the second. 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 (discussing the "reckless and dangerous nature of the crime of DUI"). 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 past trauma. However, the positive factors do not outweigh the Applicant's DUI offenses which occurred while she was in U nonimmigrant status – a 2014 DUI conviction, for which she remained on probation until [redacted] 2019 and subsequent 2014 DUI arrest for which she remained on probation until [redacted] 2020.

Further, an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation. See Matter of Edwards, 20 I&N Dec. 191, 198 (BIA 1996) (finding, in the context of discretionary eligibility for relief under former section 212(c) of the Act, 8 U.S.C. § 1182(c), rehabilitation to be a "significant factor" to be considered in the exercise of discretion "in view of the nature and extent of the [individual]'s criminal history"); Marin, 16 I&N Dec. at 588 (stating, likewise in the context of discretionary relief under former section 212(c) of the Act, that "applicants . . . who

have criminal records will ordinarily be required to make a showing of rehabilitation" and that "the fact of confinement [or] the recency of the offense" are relevant to whether rehabilitation has been established"). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which she was required to comply with court-ordered mandates, but also after her successful completion of them. See U.S. v. Knights, 534 U.S. 112, 121 (2001) (recognizing that the state has a justified concern that an individual under probationary supervision is "more likely to engage in criminal conduct than an ordinary member of the community"); Doe v. Harris, 772 F.3d 563, 571 (9th Cir. 2014) (noting that, although a less restrictive sanction than incarceration, probation allows the government to "impose reasonable conditions that deprive the offender of some freedoms enjoyed by law abiding citizens") (internal quotations omitted). Here, up until [redacted] 2020, only one year prior the filing of this appeal, the Applicant was subject to probationary requirements, including participation in an alcohol treatment program; routine attendance in AA meetings, and maintenance of an ignition interlock on her car, a device that prevents drivers from starting their vehicle after they have been drinking alcohol. As the Applicant only recently completed her probationary period and all court-ordered requirements, the record remains unclear as to whether she has been fully rehabilitated.

In the end, we acknowledge and consider the Applicant's positive and mitigating equities as reflected in the record. However, the Applicant's DUI history, which indicates that she poses a risk to public safety as well as her recent release from probation and court-ordered mandates, remains a significant adverse factor that continues to outweigh the positive and mitigating equities 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.