



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

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

In Re: 20612292

Date: MAR. 7, 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 his “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), concluding that a favorable exercise of discretion was not warranted because the Applicant’s positive and mitigating equities did not outweigh the adverse factors in his case. The matter is now before us on appeal. We review 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* 7 USCIS Policy Manual A.10(B)(2), <https://www.uscis.gov/policy-manual> (providing guidance regarding adjudicative factors to consider in adjustment of status discretionary determinations). However, where adverse factors are present, the applicant may 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 native and citizen of Brazil, last entered the United States as a visitor in 2000. USCIS granted the Applicant U nonimmigrant status as the victim of qualifying criminal activity in November 2015. The Applicant timely filed the instant U adjustment application in September 2019. The Director denied the application, concluding 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 because of the Applicant’s criminal history, which demonstrates a pattern of behavior raising concerns regarding the Applicant’s risk to public safety, the well-being of others, and his disregard for the laws of the United States. The Applicant has not overcome this determination on appeal.

A. Positive and Mitigating Equities

The Applicant has lived in the United States since he was 12 years old. The Applicant’s family ties in the United States include his U.S. citizen spouse, U.S. citizen daughter, and three stepchildren. The Applicant provided evidence that he has been a member of the United Brotherhood of Carpenters and Joiners of America since August 2015 and that he is listed as a Scaffold Carpenter Apprentice. In addition, the Applicant provided letters from family, friends, and previous employers attesting to his positive character traits such as being dependable, hardworking, and dedicated to his family.

B. Adverse Factors

The Applicant’s primary adverse factor is his criminal history. The record reflects that, in [] 2012, the Applicant was arrested and charged in [] California, for violating California Health and Safety Code section 11350(a) (possession of a controlled substance, a felony), California Health and Safety Code section 11352(a) (sale or transportation of a controlled substance, a felony), California Vehicle Code section 14601.1(a) (driving with a suspended/revoked license, a misdemeanor), and California Penal Code (Cal. Penal Code) section 273a(a) (child endangerment, a misdemeanor). In his undated personal statement, submitted in response to the Director’s December 2020 request for evidence (RFE), the Applicant explained that he was stopped by the police and when they searched his car, they found prescription pills that were not under his name. The Applicant has not provided a police report for this incident. According to court documents, the Applicant completed a Drug Diversion program, and the charges were dismissed, in [] 2013.

In [] 2021, the Applicant was charged in [] California, for violating Cal. Penal Code section 246.3(a) (negligent discharge of firearm, a misdemeanor). In his undated personal statement, the Applicant stated that he received a notice in the mail regarding the charge. The Applicant has not provided an explanation regarding the circumstances surrounding this incident. Instead, he provides an April 2021 letter from counsel explaining that the offense date allegedly occurred in [] 2020 and that “[t]he offense involved an allege discharge of a firearm at [a] discarded property in a designated garbage and dumpster area.” Counsel further explains that the Applicant has an arraignment date in [] 2021 and that the Applicant intends to deny all allegations and enter a plea

of not guilty. In addition, counsel states that he is eligible for judicial diversion. The record contains no additional information regarding the Applicant's arraignment or the disposition of this charge to date.

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. § 245.45(d)(11). Upon *de novo* review of the record, as supplemented on appeal, the Applicant has not made such a showing.

We acknowledge and have considered the favorable factors in this case, including the Applicant's long-term residence in the United States, close family ties, the hardship to himself and his family if he is forced to leave the United States and return to Brazil, and his membership in the United Brotherhood of Carpenters and Joiners of America. Notwithstanding these factors, for the reasons articulated by the Director, the Applicant has not demonstrated that he merits a favorable exercise of discretion to adjust his status to that of an LPR.

On appeal, the Applicant argues that the Director erred in concluding that he was in possession of a firearm and ammunition which has not been proven in criminal court. The Applicant further states that "[h]is convictions are those for which he is repentant but that should not render him a threat to the community or warrant a denial of his adjustment of status."

In considering an applicant's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offense(s). *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978). Here, the Applicant has been arrested on serious charges involving possession of a controlled substance, sale or transportation of a controlled substance, child endangerment, and firearm violations. The Applicant has not described in detail the specific circumstances that gave rise to each of these serious charges, nor has he submitted the police report underlying the same. Relatedly, although we acknowledge that the Applicant's charges were ultimately dismissed after his completion of a drug diversion program, that does not equate with a determination that the underlying conduct did not in fact occur. USCIS "will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of . . . multiple drug-related crimes" 8 C.F.R. § 245.24(d)(11). Moreover, the Applicant has been charged with negligent discharge of a firearm while in U nonimmigrant status. As stated in the Director's decision, the Applicant provided little information regarding this case, and he did not provide the related documents that were specifically requested in the December 2020 RFE. The Applicant does not submit any additional information or documents concerning the firearm offense on appeal, other than to state, through counsel, that he intends to deny the allegations. Assertions of counsel are not evidence and must be supported by independent evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) ("We note statements or assertions by counsel are not evidence"). Lastly, we note that the Applicant has not acknowledged or taken any responsibility for his actions aside from stating generally that he has made mistakes in the past. This raises further questions about the extent of his rehabilitation. *See Matter of Marin*, 16 I&N Dec. at 588 (noting that an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation); *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 304-5 (BIA

1996) (stating that rehabilitation includes the extent to which an applicant has accepted responsibility and expressed remorse for his or her actions).

It is ultimately the Applicant's burden to establish that he warrants adjustment of status to that of an LPR as a matter of discretion. Section 291 of the Act; 8 C.F.R. §§ 245.24(b), (d)(11). Due to the above-mentioned concerns regarding the severity and recency of the Applicant's criminal history, as well as the lack of sufficient evidence regarding the specific circumstances giving rise to each of his arrests, the disposition of his firearm-related arrest, and his rehabilitation, the Applicant has not satisfied his burden. Accordingly, the Applicant remains ineligible for adjustment of status under section 245(m) of the Act

ORDER: The appeal is dismissed.