



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

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

In Re: 19062638

Date: MAR. 21, 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). The Applicant subsequently filed a motion to reopen and reconsider; the Director affirmed the decision to deny the U adjustment application. The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. Upon *de novo* review, the appeal will be dismissed.

**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 is a 27-year-old citizen of Mexico. In November 2014, the Director granted the Applicant U nonimmigrant approval from October 1, 2014, through September 30, 2018, based on her victimization and assistance to law enforcement. The Applicant filed her U adjustment application in August 2018. In February 2020, the Director denied the Applicant's U adjustment application. The Director acknowledged the positive and mitigating equities present in the Applicant's case: her long-term residence in the United States, the Applicant's employment and payment of taxes, her participation in treatment and counseling as part of a deferred prosecution agreement, and her continued involvement with Alcoholics Anonymous.<sup>1</sup>

However, the Director determined that the positive and mitigating equities were outweighed by the adverse factor of the Applicant's criminal history. As detailed by the Director, a criminal history check revealed eight arrests between 2012 and 2018. Specifically in [ ] 2012, the Applicant was arrested and charged with possession of marijuana; the charges were ultimately dismissed. In [ ] 2013, the Applicant was arrested and charged with driving under the influence of alcohol (under age 21) and hit and run of an unattended vehicle; she was ultimately convicted of driving under the influence of alcohol.<sup>2</sup> In [ ] 2013, the Applicant was arrested and charged with assault in the fourth degree; the charge was ultimately dismissed. In [ ] 2014, the Applicant was arrested and charged with driving with a suspended license in the third degree and operating a vehicle without the ignition or interlocking device; the Applicant was ultimately convicted of operating a vehicle without the ignition interlock.<sup>3</sup> In [ ] 2015, the Applicant was arrested and charged with obstructing a law enforcement officer; she was ultimately convicted of the amended charge of disorderly conduct.<sup>4</sup> In [ ] 2015, the Applicant was arrested and charged with assault in the fourth degree, exposing minor children to domestic violence, and disorderly conduct; the Applicant was ultimately convicted of disorderly conduct.<sup>5</sup> In [ ] 2016, the Applicant was arrested and charged with driving with a suspended license in the third degree; she was convicted of that charge.<sup>6</sup> A criminal history check based on an electronic fingerprint analysis also revealed that in [ ] 2018, the Applicant was arrested for assault in the fourth degree (domestic violence); the Applicant maintains that no charges were filed against her.<sup>7</sup>

The Director went on to note that the Applicant's lengthy criminal history, which included drug and alcohol offenses as well as multiple violent offenses, were particularly serious and of great concern. The Director also noted that some of the Applicant's actions as detailed in police reports, including pushing an individual against a fence and punching him twice in the face in [ ] 2014, and attempting to kick a police officer in [ ] 2015, after being placed in handcuffs, created victims

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<sup>1</sup> We also acknowledge the Applicant's family ties in the United States, including the presence of her mother and siblings; letters in support from the Applicant's employer, friends, family members, and a professor, detailing her involvement and support with the community, her family, and her friends; the Applicant's academic pursuits, obtaining her GED in June 2018, and enrolling as a full-time student at Bellevue College; and her expressions of remorse for the mistakes she made.

<sup>2</sup> The record establishes that the Applicant complied with all the terms of her sentence, and the case was ultimately closed.

<sup>3</sup> The record establishes that the Applicant complied with all the terms of her sentence, and the case was ultimately closed.

<sup>4</sup> The record establishes that the Applicant complied with all the terms of her sentence, and the case was ultimately closed.

<sup>5</sup> The record establishes that the Applicant complied with all the terms of her sentence, and the case was ultimately closed.

<sup>6</sup> The Applicant has submitted documentation on a appeal establishing that no police report was located for this incident.

<sup>7</sup> The Applicant has submitted documentation on a appeal establishing that no police report was located for this incident.

and such behavior is “extremely concerning to public safety and contrary to the purposes of the U nonimmigrant program.” The Director concluded that the record did not suffice to establish that the Applicant’s 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 a positive exercise of discretion to adjust her status to that of an LPR.

The Applicant subsequently filed a motion to reopen and reconsider asserting eligibility for the benefit sought. The Applicant asserted that while her criminal history was not insignificant, it was not nearly as serious as the Director had concluded, as many of the charges against her were ultimately dismissed and any pending criminal matters had been closed because the Applicant complied with the terms and conditions of her sentencing. In support, counsel for the Applicant submitted all of the available arrest reports and letters in support of the Applicant from her mother and sister.

The Director affirmed the decision to deny the Applicant’s U adjustment application and denied the motions accordingly, finding that the decision to deny the Applicant’s U adjustment application was not in error. Of specific concern to the Director was the Applicant’s “lengthy criminal history that includes drug and alcohol offenses, as well as multiple violent offenses, which are particularly serious.”

On appeal, counsel submits a brief and reiterates many of the assertions previously made in the Applicant’s motion to reopen and reconsider. Counsel also submits a June 2021, psychosocial evaluation of the Applicant, and additional letters in support of the Applicant from her siblings, mother, and a friend. In summary, counsel for the Applicant maintains that the USCIS focused solely on the Applicant’s “relatively minor criminal history” and “incorrectly concluded that her misdemeanor convictions were particularly serious and that her numerous positive equities did not outweigh these misdemeanor offenses.”

We adopt and affirm the Director’s decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (“[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings” provided the tribunal’s order reflects individualized attention to the case).

The arguments advanced on appeal are not sufficient to overcome the discretionary denial of the Applicant’s U adjustment application. 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 record indicates that the Applicant was arrested on four separate occasions since obtaining U nonimmigrant status of offenses related to obstructing a law enforcement officer, assault, and driving with a suspended license; three of these arrests led to convictions. We also find the Applicant’s conviction for driving under the influence of alcohol (under age 21) to be very serious. The reporting officer narrative regarding the Applicant’s [ ] 2013, arrest provided that the Applicant had a strong odor of alcohol and bloodshot, watery, and droopy eyes. While administering sobriety tests, she was “constantly interrupting and giggling.” Driving under the influence of alcohol is both a serious crime that poses a risk to others and a significant adverse factor relevant to our consideration of whether the Applicant warrants a favorable exercise of our discretion.

*See Matter of Siniauskas*, 27 I&N Dec. 207, 208-09 (BIA 2018) (finding DUI a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (BIA 2019) (discussing the "reckless and dangerous nature of the crime of DUI").

Further, an applicant for discretionary relief "who has a criminal record will ordinarily be required to present evidence of rehabilitation before relief is granted as a matter of discretion." *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991); *see also Matter of Marin*, 16 I&N Dec. at 588 (emphasizing that the recency of a criminal conviction is relevant to the question of whether rehabilitation has been established and that "those who have recently committed criminal acts will have a more difficult task in showing that discretionary relief should be exercised on their behalf"). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which he was required to comply with court-ordered mandates, but also after his 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"). In this case, we note the Applicant was arrested and charged with assault in the fourth degree, exposing minor children to domestic violence, and disorderly conduct in November 2015, approximately two months after being arrested and charged with obstructing a law enforcement officer. Moreover, the Applicant's most recent arrest was approximately five months prior to filing the U adjustment application, and approximately three years prior to when the instant appeal was filed.

To summarize, the Applicant's family ties; employment and community ties; hardships to herself and her family; letters in support; gainful employment and the payment of taxes; academic pursuits; and expressions of remorse while favorable, are not sufficient to establish that her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the nature, recency, and severity of the actions that lead to her eight arrests between 2012 and 2018, four during her U nonimmigrant status. Consequently, the Applicant has not demonstrated that she merits a favorable exercise of discretion to adjust her status.

**ORDER:** The appeal is dismissed.