



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

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

In Re: 18236412

Date: MARCH 22, 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 statement 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 2014 until September 2018. In July 2018, he filed the instant U adjustment application. Through a request for evidence (RFE), the Director informed the Applicant that the record did not contain copies of all pages of his passport, as required, or a Form I-693, Report of Medical Examination and Vaccination Record, that contained the civil surgeon's findings of his re-examination of the Applicant's physical and mental status in light of the Applicant's arrest history related to driving under the influence of alcohol (DUI). The Director also requested documentation related to the Applicant's 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 the copies of all pages of his passports valid during the period that he was in U nonimmigrant status in the United States and copies of available court and arrest records.

After review, the Director denied the application, determining that the Applicant's repeated arrests for DUI demonstrated a pattern of behavior that presents a risk to the well-being and safety of others, and the Applicant's 1997 arrest for carrying a concealed firearm in a vehicle, a violation of federal law, were significant adverse factors. The Director acknowledged the fact that the Applicant had not been arrested for DUI since 2010 but concluded that the mitigating factors in his case did not outweigh the adverse factors found in the record. The Director also highlighted that because the Applicant did not avail himself of the opportunity to address his history of driving while impaired with the civil surgeon, as requested, USCIS was unable to determine whether the Applicant no longer represented a risk to the well-being and safety of others and the property of others. The Director further noted that, while not factored into the denial, the Applicant failed to disclose a 2003 arrest on battery charges on his Form I-918 and Form I-485 or submit a statement or any of the required documents regarding this arrest or incident.

A. Positive and Mitigating Equities

As the Director acknowledged, the Applicant's positive and mitigating equities include: his lengthy residence in the United States; long history of employment; and family ties in the country, particularly his LPR spouse and seven U.S. citizen children.

B. Adverse Factors

The Applicant's primary adverse factor is his criminal history, which includes: (1) a 1997 arrest for carrying a concealed firearm in a vehicle in violation of California Penal Code (Cal. Penal Code) section 25400 – the record contains a letter from the Superior Court of California, [REDACTED] indicating that the arrest and disposition records for this case were destroyed in accordance with California's record and file retention policy;¹ (2) a 2002 conviction for DUI of .08 percent or more alcohol, in violation of California Vehicle Code (Cal. Veh. Code) section 23152(a), for which he was sentenced to two days of confinement and 36 months of probation; (3) a 2003 arrest for disturbing the

¹ In his statement, the Applicant explained that he and four friends borrowed a friend's car, and during a traffic stop, police officers spotted a firearm in the vehicle. He stated, "I did not know that my friend had a firearm in his car. I do not recall where the firearm was located as seventeen years have passed. I was taken to jail for approximately 12 hours, was summoned to court, and paid a fine."

peace in violation of Cal. Penal Code section 415 – the record contains a letter from the Superior Court of California, [REDACTED] indicating that the arrest and disposition records for this case were destroyed in accordance with California’s record and file retention policy;² (4) a 2007 conviction for DUI of .08 percent or more alcohol, in violation of Cal. Veh. Code section 23152(a), for which he was sentenced to two days of confinement and 36 months of probation; and (5) a 2010 arrest for DUI of .08 percent or more alcohol, in violation of Cal. Veh. Code section 23152(a) – the record reflects that the DUI charge was dismissed upon a Serna motion.³

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 provides a Form I-693 addressing his history of driving while impaired wherein the civil surgeon states that the Applicant is a rehabilitated alcoholic who is no longer a public health risk.⁴ We acknowledge and consider the Applicant’s expressed remorse for his actions and that he is continuing his rehabilitative efforts. We also acknowledge the Applicant’s remaining favorable and mitigating equities as reflected in the record, including the hardship that he and his family would experience if his application remains denied. However, the evidence submitted on appeal, including the Form I-693 indicating that the Applicant is a rehabilitated alcoholic, is not sufficient to overcome the discretionary denial of his U adjustment application because of the seriousness of his 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). We acknowledge the findings in the Form I-693 and the fact that the Applicant has not had interactions with law enforcement since 2010. However, in addition to other criminal interactions, the Applicant has two DUI convictions and an additional DUI arrest. The alcohol-related offenses reflect a disregard for U.S. laws, pose a risk to public safety that is not inherent in other types of offenses, and are serious adverse factors in our discretionary determination. 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 addition, the Applicant has a 1997 arrest for carrying a concealed firearm, and pursuant to 18 U.S.C. § 922(g), a foreign national who is illegally or unlawfully in the United States cannot legally receive or possess firearms and/or ammunition. We also acknowledge that the arrest and disposition records relating to the Applicant’s 2003 arrest for disturbing the peace were destroyed; however, the Applicant has not

² The denial decision indicated that this was an arrest on battery charges; however, the letter from the Superior Court of California [REDACTED] indicates that the arrest was for a violation of Cal. Penal Code section 415, and disposition records for this case were destroyed in accordance with California’s record and file retention policy.

³ In the California criminal court system, a Serna motion is a motion to dismiss charges because the defendant was denied the constitutional right to a speedy prosecution or a speedy trial.

⁴ With this evidence, counsel for the Applicant requested additional time to submit a supplemental declaration from the Applicant and other evidence for consideration. At the time of this decision, our office has not received any supplemental evidence.

addressed or discussed the circumstances leading to that arrest. Because the Applicant has not submitted evidence describing the circumstances of the incident, in the form of a personal statement or similar document, we cannot accurately assess the underlying conduct or behavior leading to the arrest.

In the end, we acknowledge and consider the Applicant's positive and mitigating equities as reflected in the record as well as the fact that records related to Applicant's 1997 and 2003 were destroyed. However, considering the seriousness of the Applicant's criminal history, the adverse factors in his case continue to outweigh the positive and mitigating equities such that he has not established that he warrants a favorable exercise of discretion to adjust his status to that of an LPR. Accordingly, he remains ineligible for adjustment of status under section 245(m) of the Act.

ORDER: The appeal is dismissed.