U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19329697

Date: MAR. 29, 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) based on his derivative "U" nonimmigrant status under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), and subsequent motion to reopen and motion to reconsider, as a matter of discretion, concluding that there was insufficient evidence to show that the positive and mitigating equities outweigh the negative factors in the case. The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence and reasserts his eligibility.

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; *see also* 8 C.F.R. § 245.24(b)(6). The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b); *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(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 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) ("[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 Mexico, was granted U-3 status from March 2015 until September 2018. The Applicant timely filed the instant U adjustment application in May 2018.

The Director denied the Applicant's U adjustment application, concluding that he did not submit sufficient evidence to establish that he warranted adjustment of status to that of an LPR as a matter of discretion. The Director acknowledged the positive and mitigating equities present in the Applicant's case: his employment and filing of taxes, and his U.S. citizen daughter. However, the Director found that his juvenile offense and criminal history outweighed these positive and mitigating equities, highlighting the serious and violent nature of his [redacted] 2013 arrest for obstruction of justice and the lack of a related court disposition. The Director also cited the Applicant's additional arrests, listed in the Utah Case Summary provided, for graffiti vandalism in [redacted] 2009 and [redacted] 2010 and school violations in [redacted] 2011, and noted that court dispositions likewise had not been provided for these incidents. Finally, the Director acknowledged the Applicant's statements that he is not involved in a gang and simply socialized with some old friends that were gang members at the time of his criminal activity, and explained that associating with gang members and involvement in a shooting incident involving gang members is a significant adverse factor in the exercise of discretion.

In dismissing the Applicant's motion to reopen and motion to reconsider, the Director acknowledged that the Applicant's length of residency in the United States is also a positive equity in his case; however, his residency has been marked by multiple arrests and negative encounters with law enforcement, which limit its weight in the exercise of discretion. The Director noted that, while the Applicant stated, through counsel, that his child would face hardship if he were not allowed to remain in the United States, he did not provide any evidence in support of this statement. The Director also noted that, while the Applicant stated, through counsel, that he no longer associates with the friends that are involved in gangs, he also did not provide any evidence in support of this statement. Further, the Director noted that, while the Applicant submitted various letters of support attesting to his good moral character, none of the letters address his arrest history or any rehabilitative efforts he has undertaken. The Director concluded that the positive factors in the Applicant's case do not outweigh the concerns regarding public safety, disregard for U.S. law, association with gang members, and involvement in a shooting incident involving gang members, which are not behaviors in the public interest.

On appeal, the Applicant provides a brief from counsel and an updated letter from a family friend. The Applicant states, through counsel, that he was not charged with "felony obstruction of justice," but rather with a "class B misdemeanor / against public order," which was adjudicated in April 2012, with the following dispositions: detention home, detention released, hours community service, motion granted, other administrative action, release from home detention, restrictions/no contact, and terminate jurisdiction. Counsel concludes that the evidence supports a finding that favorable

discretion should be exercised in this case as it is warranted for family unity and stability, and is in the public interest.

A. Positive and Mitigating Equities

In the record before the Director, the Applicant provided evidence of his family ties in the United States, which include his U.S. citizen daughter, his immediate family, his residence in the United States since he was an infant, and his continued employment and payment of taxes. He also provided letters from family and friends attesting to his good moral character.

B. Adverse Factors

The Applicant's primary adverse factor is his juvenile offense and criminal history, specifically multiple juvenile adjudications, all prior to U nonimmigrant status. The record includes substantial evidence of two interactions with law enforcement where the Applicant faced the imposition of charges, one in [redacted] 2010 and another in [redacted] 2013. The incident in [redacted] 2010 involved vandalism of a structure with graffiti. According to the police report, a bystander witnessed the Applicant and his two friends spray-painting graffiti on the back wall of a Walmart store. The police report stated that the Applicant and one other friend were acting as "possible lookouts" while the third friend spray-painted a word in big bubble letters on the wall. According to the police report, the officer advised the Applicant and his mother that "charges will be being screened against [the Applicant] for graffiti on the back wall." However, the Applicant did not provide any court dispositions or juvenile adjudications regarding this incident. The "Case History Summary" from the Utah State Courts, submitted in response to the Director's request for evidence (RFE), indicates that, for the offense that occurred on [redacted] 2010, the Applicant was charged with "Graffiti <$300 Damage Class C Misdemeanor / Against Property," and the dispositions were: detention suspended, hours community service, and restrictions/no contact, adjudicated in [redacted] 2011.

According to the Applicant's statement regarding this incident,[1] his friend did graffiti art, "which [he] thought was a type of art that would not be used as vandalism." He stated that this friend started to show him this art on actual properties but he wanted to learn how to do it on paper and canvas. He stated that his friend would sometimes draw on walls and fences and he "didn't approve of it and sometimes [they] did get in trouble due to these situations." He stated that he "tried telling [his] friend that it wasn't okay but he wouldn't listen." The Applicant acknowledged that he "shouldn't have been hanging out with him as long as [he] did because [they] would get in trouble together and [he] wasn't getting the proper knowledge towards the type of art [he] wanted to do." The Applicant concluded that he never thought of this as a way to cause damage towards property or others. The Applicant did not discuss the specific incident outlined in the police report and did not acknowledge his role as a "possible lookout" during the incident.

The incident in [redacted] 2013 involved gunfire out of a vehicle where the Applicant was located. According to the police report, the Applicant and his friends were eating at a local restaurant when a group of several males began harassing them about gang membership. It states that the Applicant's group had a verbal altercation with the males in the restaurant parking lot and left in a friend's car

[1] The Applicant's statement indicates that it relates to vandalism charges in 2009, 2010, and 2011.

when one of the eight individuals in the car fired a handgun out of the window at the other males in the parking lot. The police followed the vehicle and apprehended all eight of the occupants, including the Applicant. According to the police report, when the Applicant was questioned about the incident, he refused to speak to police officers. The police officer then stated that he "asked him no questions about the incident and only gathered personal information." However, again, the Applicant did not provide any court dispositions or juvenile adjudications regarding this incident. The "Case History Summary" from the Utah State Courts does not list any offense that occurred in [redacted] 2013. According to Applicant's counsel on appeal, he states that the summary shows that the Applicant was not charged with "felony obstruction of justice,' but rather with a "class B misdemeanor / against public order," which was adjudicated in [redacted] 2012 with the following dispositions: detention home, detention released, hours community service, motion granted, other administrative action, release from home detention, restrictions/no contact, and terminate jurisdiction.

The Applicant provided a statement regarding this incident, as follows:

> Some friends and I were hanging out all day, later on that night we were hungry and decided to get some food. We went to Rancheritos and ate in. As we were all sitting and eating, one of my friends decid[ed] to lay down on the benches and take a nap. Some men had walked into the restaurant, ordered[,] and found a place to sit, as one of them walked by my friend that was laying [down], he for some reason, decided to kick my friend and tell him to wake up. My friend woke up, sat down by us again and we all decided to finish eating as soon as we could so we could go. As we were walking into our cars, the man that kicked my friend had walked outside with his buddies and decided to mess with us. They were yelling and they all started running towards us. My friends and I all got inside the cars and one friend, as self-defense decided to take a gun out and shoot into the air to scare them off. Everyone scattered and got into their cars. We started to head home and as we were driving[,] a police officer got behind us and did pull us over. We were all frightened and we did not want to get in trouble in the first place, we weren't trying to cause a scene or make any situation worse so we all did as the officers said. We were all just trying to have a good time as kids would. The police officer knew of the situation and made us all get out of the car. The police officers arrested us and we all got brought into the police station for fingerprints and questioning. The police officers [k]new that it was one of us that had shot the gun, they told us that one of us had to take the fault for the situation. They stated that once one of us did take the fault for the group, the others would be let go. The friend that had shot the gun eventually took the fault for the situation and the police officers released the rest of us to our parents. The friend that took the fault, took all the charges for that situation. They had informed us that none of the rest would be charged as we did not shoot the gun. This was never supposed to be put on record for the rest of us. The charges were claimed as a dismissal. It was a bad situation that was not supposed to happen. To this day, I do not understand why those men decided to mess with younger kids.

Further, the "Case History Summary" from the Utah State Courts lists additional interactions the Applicant has had with law enforcement. According to this summary, the Applicant also was charged with the offense of "Graffiti <$300 Damage Class B Misdemeanor / Against Property" in [redacted] 2009,

and the disposition is indicated as "NJ Community Service Hours," and the offense of "Sch. Violations- Not Higher Edu Class B Misdemeanor / Against Public Order" in [redacted] 2011, and the "intake decision" is indicated as "Petition Denied by Prosecutor" in [redacted] 2011.

The Applicant also provided a statement regarding his involvement in gang activity in response to the RFE and again on motion to the Director. The Applicant initially stated that he "[has] never been involved or been a member in a gang." He stated that he "would only hang out with people that were in a gang, due to knowing them before affiliations with gang members." He stated that "[t]hese were some of [his] closest friends and they never appeared to [him] as gang member[s]." On motion, the Applicant stated that he "never belonged to any gang" and that he "had friends from school who [he] sometimes hung out with but [he] never thought [he] was anything like them." He also stated that "[t]o [him,] they were like [his] brothers but [he] never belonged to a gang or even thought about becoming a gang member." Then, the Applicant's counsel further stated, on motion, that "[the Applicant] stopped associating with those friends and was a positive influence in their lives to allow the to change for the better."

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 a careful review of the entire record, including the new evidence submitted on appeal, the Applicant has not met his burden of establishing that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

First, as a minor, the Applicant was arrested on multiple occasions. While the actual dispositions of those charges remain largely unknown, we recognize that an adjudication of youthful offender status or juvenile delinquency is not a criminal conviction under the immigration laws. *Matter of Devison-Charles,* 22 I&N Dec. 1362, 1373 (BIA 2000). However, all relevant factors are considered in assessing an applicant's eligibility for adjustment of status as matter of discretion. 8 C.F.R § 245.24(d)(11). Juvenile offenses and the circumstances surrounding them are factors relevant to the determination of whether a favorable exercise of discretion is warranted. *See Castro-Saravia v. Ashcroft*, 122 Fed. Appx. 303, 304-05 (9th Cir. 2004) (concluding that *Matter of Devison* does not preclude consideration of juvenile delinquency when making a discretionary determination). *See generally Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996) (including, in adverse factors relevant to discretionary relief, "the presence of other evidence indicative of an [applicant's] bad character or undesirability as a permanent resident"). Accordingly, on appeal, we have considered the full scope of the Applicant's history of juvenile offenses.

Next, 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). Moreover, 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 been rehabilitated, we examine not only an applicant's actions during the period of time for which they were required to comply with court-ordered mandates, but also after they have satisfied all court-ordered and monitoring requirements. *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"). Finally, when an individual is on probation, they enjoy reduced liberty. *See, e.g., 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); *U.S. v. King*, 736 F.3d 805, 808-09 (9th Cir. 2013) ("Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled.") (internal quotations omitted).

In this case, as noted above, the Applicant was arrested at least two times, as has been fully disclosed in the record, once for graffiti vandalism, and another for obstructing justice. While the third offense for graffiti vandalism in 2009, listed on the "Case History Summary" from the Utah State Courts, has been acknowledged by the Applicant, the record does not include a police report or court disposition outlining the events or outcome of the incident. We acknowledge and do not seek to diminish the Applicant's assertions that he has never been a gang member and has never been involved in gang activity. Nonetheless, we must adjudicate the Applicant's U adjustment application based on the record before us and the Applicant readily admits being friends and spending time with members of a gang, as well as being involved in a gang-related incident that involved the firing of a weapon. While the "Case History Summary" from the Utah State Courts provides the offense date, offense description and severity, disposition, and status for each offense (five listed), the Applicant has not submitted the details of his plea or the details of his adjudication and sentencing for any of the arrests indicated in the record. The dispositions listed on the summary are unclear as to the Applicant's plea or admission of guilt, and any imposition of actual consequences or adjudications for his actions. Furthermore, the Applicant asserts on appeal, through counsel, that, in reference to his arrest in [redacted] 2013, he was not charged with "felony obstruction of justice," but rather with a "class B misdemeanor / against public order," which was adjudicated in [redacted] 2012, with the following dispositions: detention home, detention released, hours community service, motion granted, other administrative action, release from home detention, restrictions/no contact, and terminate jurisdiction. However, this offense, listed on the "Case History Summary," shows an offense date in [redacted] 2012, an "adjudicated" date of [redacted] 2012, and a court date of [redacted] 2012, all one year or more prior to the date of the actual incident. The "Case History Summary" does not list any offense with a date of [redacted] 2013, as is listed on the police report.

Moreover, the Applicant's explanation of the circumstances giving rise to his arrest is inconsistent with the contemporaneous arrest reports. In the Applicant's account of the incident in [redacted] 2013, he stated that his friend just fired a gun into the air in self-defense, to scare off the other individuals. He further seemed to indicate that the police were following their vehicle and pulled them over unprovoked. However, the police report states that there were multiple gunshots fired out of the vehicle, and the officer indicated that the Applicant refused to speak to police officers so they did not continue questioning him about the incident. Here, the inconsistencies regarding the circumstances surrounding the incident, and the documentation of the Applicant's refusal to cooperate with police in relevant reports, raise serious concerns regarding the specifics of the events that took place and the Applicant's involvement in them, particularly given the seriousness of the incidents, as

well as whether he has accepted full responsibility and expressed remorse for his actions. The Applicant has not stated, at any time in the record, that he takes responsibility for his actions during these incidents or is remorseful for his involvement. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 304-5 (BIA 1996) (explaining that rehabilitation includes the extent to which an applicant has accepted responsibility and expressed remorse for his or her actions). In fact, in a statement, the Applicant said that he was not supposed to be charged in the [redacted] 2013 incident and that it "was never supposed to be put on record for the rest of [them]" because the individual that fired the gunshots confessed to police. Then on motion, the Applicant specifically stated that "[he was] aware that when [he] was a minor [he] was not responsible for [his] decisions."

In sum, we acknowledge the record contains positive and mitigating equities. The Applicant has been in the United States since infancy and has family ties in the United States, including a U.S. citizen daughter. He also works to support himself and his child, and has paid taxes. Several letters of support describe him as a good man, kind, hardworking, and a good father. Nonetheless, considering the nature and seriousness of his juvenile offense and criminal history and the conduct underlying it, as well as the lack of sufficient evidence in the record regarding the outcome of each incident and the Applicant's related rehabilitation, we agree with the Director that the Applicant has not demonstrated that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that he warrants a positive exercise of our discretion to adjust his status to that of an LPR under section 245(m) of the Act. The application will remain denied accordingly.

III. CONCLUSION

The Applicant has not established 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.