



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

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

In Re: 21898841

Date: MAY 2, 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), as a matter of discretion, and the matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. Upon *de novo* review, we will remand the matter to the Director for the issuance of a new decision.

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; *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* 1 *USCIS Policy Manual* E.8(C)(2), <https://www.uscis.gov/policy-manual> (providing guidance regarding adjudicative factors to consider in discretionary determinations). However, where adverse factors are present, the applicant should 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 Director's decision described the procedural history of this case which we adopt here. The Applicant filed the instant U adjustment application that is currently before us in July of 2020. In his application, he indicated that in [] 2014, he was arrested and charged with Abduction by Force to Deprive of Liberty "after giving a bear hug to a high school friend and making an inappropriate comment." He explained that he was arrested again in [] 2016 and charged with Misdemeanor Sexual Battery based on the same incident. According to the Applicant, his defense attorney at the time did not tell him that new charges had been filed against him and he therefore did not know there was a summons for his arrest until he was arrested in [] 2016. He indicated that both charges were dismissed.

The Director denied the application, finding:

Though the charges were dismissed, your behavior is very concerning to USCIS given the nature and implications of your actions. The record establishes that the decision on the misdemeanor sexual battery charge was *nolle prosequi* . . . , not a finding of not guilty. While you have admitted to the arrest, there is no evidence in the record to further indicate the nature and circumstances of the charge. . . . The statements provided in your affidavit do not appear to align with the felony arrest or the decision by the judge to hold you in adult jail for 37 days. . . . As such, the charges could indicate a serious offense. . . .

The Director found that the behavior associated with the Applicant's arrest "suggests a concern for public safety," specifying that the arrest warrant and the Applicant's affidavit were "the only evidence available for a discretionary analysis regarding [the] criminal arrest." The Director acknowledged numerous favorable equities in the case, including: the Applicant's long duration of residence in the United States for most of his life; his marriage to a U.S. citizen and two U.S. citizen children; the vital role he plays in providing financial and emotional support to his family and his mother-in-law who requires medical care on a daily basis; his employment and payment of taxes; and third-party declarations describing the positive contributions he makes to the community. However, the Director concluded that "[b]ased on the evidence of record a clear understanding of the events leading to a charge of such a serious nature cannot be determined," and denied the application accordingly.

On appeal, the Applicant argues, in part, that it was incorrect for USCIS to assume that the facts surrounding the incident that led to the charges were more serious than the Applicant reported. He explains that he was a high school student at the time and that he made an awful joke about rape which he deeply regrets. He states he was able to obtain the police reports through a Freedom of Information Act (FOIA) request, and also obtained certified copies of the Complaints that were submitted with each charge. According to the Applicant, the narratives in the Complaints are consistent with his narrative describing the incident. He further explains that the prosecutor dropped the felony charge at the preliminary hearing and recharged the Applicant with a misdemeanor, thus demonstrating that the facts of the case do not align with a felony charge. He contends that after both arrests, the prosecutor declined to prosecute and the charges were dismissed. In support of his assertions, he submits new

evidence, including but not limited to: his FOIA request; a copy of the Incident Report from the [redacted] Sheriff's Office which describes the Applicant's arrest in [redacted] 2016 for the [redacted] 2014 incident; certified copies of the Criminal Complaints charging the Applicant with Abduction (dated [redacted] 2014) and Sexual Battery (dated [redacted] 2014) which include a detailed description of the incident¹; supplemental declarations from the Applicant, his wife, and mother-in-law; and evidence the Applicant's wife is currently receiving prenatal care for a high risk pregnancy.

Because the Applicant has submitted new, material evidence on appeal that is directly relevant to issues that informed the Director's discretionary determination, we deem it appropriate to remand the matter for the Director to consider the record in its entirety in the first instance and to determine whether a favorable exercise of discretion is warranted.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of new decision consistent with the foregoing analysis.

¹ The narratives state that a 16-year-old student reported that "an acquaintance of hers [the Applicant] grabbed her in the hallway and hugged her to the point where she felt she could not get away," "made comments that he is going to rape her," and that the Applicant stated he "was joking."