U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22920137

Date: NOV. 8, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of U Nonimmigrant

The Applicant, who was granted derivative "U" nonimmigrant status as the spouse of a victim of qualifying criminal activity, 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). The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application) concluding that the Applicant did not establish he a favorable exercise of discretion was warranted, and the matter is now before us on appeal. 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 applicants 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 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 is a 44-year old citizen of Mexico, who claims to have last entered the United States without inspection and admission or parole on September 1, 2006.[1] In [redacted] 2013 the Applicant married his spouse, who shortly thereafter filed a Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (derivative U petition) on his behalf. USCIS approved the derivative U petition in January 2017, granting the Applicant derivative U-2 nonimmigrant status until January 2021, and he timely filed the instant U adjustment application in May 2020. The Director denied the application, concluding that the Applicant had not established 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. In reaching this conclusion, the Director found that the evidence was insufficient to determine whether a favorable exercise of discretion was warranted, because the Applicant did not provide the requested police reports concerning his arrests for battery of his spouse.

The record reflects that the Applicant was arrested and charged with domestic battery in violation of section 243(e)(1) of the California Penal Code twice—in 2012 and 2014. With his Form I-485, the Applicant submitted documents from the from the Superior Court for [redacted] California indicating that the case associated with the 2012 arrest was rejected in [redacted] 2016, and the case resulting from the 2014 arrest was discharged in [redacted] 2014. In addition, the Applicant provided a printout from the [redacted] Superior Court public records to show that he had only one conviction—for failure to stop at a stop sign, in 2019. The Director subsequently issued a request for evidence asking the Applicant to submit, in part additional information about all of his arrests, including "actual arresting officer's report of the arrest and/or citation" and a statement in his own words describing the circumstances and behavior that led to each arrest for USCIS to consider whether a favorable exercise of discretion was appropriate.

In response, the Applicant submitted a letter from the District Attorney for [redacted] California stating that while there is no current plan to file criminal charges relative to the 2012 incident, the District Attorney's Office could review the matter in the future upon the receipt of new information and re-evaluate its decision. Regarding the underlying arrest, the Applicant stated generally that he and his spouse, who was pregnant at the time, were arguing and he went for a walk so she could calm down. He explained that when he came back the police had arrived, but there were no charges filed because "[i]t was simply an argument between a couple" and "nothing had happened." He did not address the 2014 arrest for domestic battery, or the circumstances that led to his 2019 conviction for failure to stop at a stop sign. As stated, the Director denied the U adjustment application concluding that because the Applicant did not provide the requested arrest reports, he did not meet his burden of proof to establish that a grant of adjustment of status was warranted as a matter of discretion despite his criminal history.

The Applicant asserts that he previously provided all relevant documentation that was available to him, and the Director's denial of his adjustment of status request was therefore in error. He submits

[1] The record reflects that he was apprehended at the border by immigration authorities on [redacted] 2006, and allowed to voluntarily return to Mexico. The Applicant has not provided additional information about the timing and circumstances of his claimed entry into the United States in September 2006.

additional evidence, which includes a California criminal history information report, as well as character letters.

We have reviewed the entire record as supplemented on appeal, and conclude that the Applicant has not overcome the grounds for the denial of his U adjustment application.

The Applicant avers that he has established that although he was arrested and detained in 2012 and 2014, the arrests did not result in prosecution of the charges against him and both cases were ultimately closed. He states that he therefore has shown that he is not inadmissible to the United States on criminal or any other grounds and statutorily eligible to adjust his status, and "[i]t is unclear on what authority USCIS based their denial." Lastly, the Applicant asserts that because the charges against him were not prosecuted, his criminal record is neither serious in nature nor recent, as his last arrest occurred prior to the grant of his U-2 nonimmigrant status.

As an initial matter, even if an applicant meets all of the other statutory and regulatory requirements for adjustment of status under section 245(m) of the Act, USCIS only approves the application if the applicant demonstrates that they warrant a favorable exercise of discretion. *See* 7 *USCIS Policy Manual* A.10(B)(2), *supra*. While the Applicant indicates that he merits adjustment of status because he was not convicted of domestic battery on his spouse, the fact that the charges against him were not prosecuted does not establish that he did not engage in conduct that led the police to arrest and detain him, or that the charges were unsubstantiated. *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination). Moreover, contrary to the Applicant's assertion that his criminal record is not serious in nature, battery is defined under California law as "any willful and unlawful use of force or violence upon the person of another." Cal. Penal Code § 242 (West 2012). We acknowledge that the Applicant was not convicted of domestic battery. However, reliance on an arrest report in adjudicating discretionary relief, even in the absence of a criminal conviction, is permissible provided that its use is not fundamentally unfair to the noncitizen. *See e.g.*, *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) (finding the admission of police reports "especially appropriate in cases involving discretionary relief . . . where all relevant factors . . . should be considered to determine whether an [applicant] warrants a favorable exercise of discretion.").

While the Applicant denies any wrongdoing concerning the 2012 arrest, and suggests instead that the incident occurred because of his spouse's pregnancy and depression,[2] he still does not provide the related police reports, and he does not submit evidence to show that such reports are not available or could not be obtained from the arresting agency. Furthermore, the Applicant does not address his 2014 arrest, nor does he explain the circumstances that gave rise to the second domestic battery charge against him. The Applicant also does not submit documents to establish the specific reasons the 2012 case was rejected, and the 2014 case was discharged. Thus, while we acknowledge the Applicant's claim that the arrests are not recent, due to the lack of corroborating evidence we are unable to

[2] In his statement concerning the [redacted] 2012 arrest previously submitted in support of the derivative U petition, the Applicant claimed that his spouse got mad when he returned home after the argument thy had earlier, that he decided it was best to call a nurse who "was in charge of his spouse's health for her postpartum depression," and that it was likely the nurse who called the police. In the accompanying statement, the Applicant's spouse indicated that the Applicant did not hurt her and denied calling the police. Although both statements are dated in November 2014, neither the Applicant nor his spouse mentioned the second domestic battery arrest, which occurred in [redacted] 2014.

determine the extent to which the Applicant has been forthcoming with USCIS about his underlying behavior and accepted responsibility for his actions, which in turn raises questions about the extent to which he has been rehabilitated. *See Matter of Marin*, 16 I&N Dec. 581, 588 (BIA 1978) (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).

The Applicant also asserts that the positive equities in his case vastly outweigh the negative ones as he has been residing in the United States for almost 16 years; has a lawful permanent resident spouse and a U.S. citizen child; has been consistently employed in the food service industry; is enrolled in English language classes; and the character letter from his family, friends and coworkers make it clear that he is and exceptional father and husband who devotes his time to helping others.

We recognize the positive factors referenced above; however, they are not sufficient to mitigate the Applicant's criminal history and lack of arrest reports or similar documentation describing the circumstances of his arrests, and inadequate information about the reasons the charges against him were not prosecuted. Moreover, as none of the letters attesting to the Applicant's good character address his criminal history, we cannot give them significant weight in the discretionary analysis.

In conclusion, the preponderance of the evidence in the record remains insufficient to demonstrate that the Applicant's 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 favorable exercise of discretion despite his criminal history. Consequently, the Applicant has not established eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.