



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

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

In Re: 23214561

Date: NOV. 29, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of a 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 his “U-3” derivative nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and then dismissed a subsequently filed motion to reconsider. The dismissed motion to reconsider is the matter before us on appeal.

We review 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”).

A motion to reconsider must establish that the decision was based on an incorrect application of the law or USCIS policy and that the decision was incorrect based on the evidence in the record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was granted U-3 derivative nonimmigrant status based upon his mother’s U-1 nonimmigrant status from November 10, 2015 to November 28, 2019. He timely filed his U adjustment application in November 2019, and during the pendency of the Applicant’s U adjustment application, the Director issued a request for evidence (RFE) related, in relevant part, to the Applicant’s [REDACTED] 2016 arrest for Felony Domestic Violence under section 273.5(a) of the California Penal Code.¹ The Director determined that the significant adverse factor of the Applicant’s criminal history, consisting of his [REDACTED] 2016 arrest for felony domestic abuse under section Corporal Injury to Spouse/Cohabitant and his subsequent [REDACTED] 2016 conviction for False Imprisonment, outweighed the identified positive factors. The Director therefore concluded that the Applicant had not established, by a preponderance of the evidence, that a favorable exercise of discretion was warranted in adjusting the Applicant’s U-3 nonimmigrant status.

In November 2021, the Applicant filed a motion to reconsider the matter with the Director on the basis that the Director had incorrectly denied his U adjustment application by placing too little weight on the positive equities in his case, and giving too much weight to his criminal charge. With this motion the Applicant submitted a brief, a complete police report for the [REDACTED] 2016 arrest, the order of dismissal for his 2016 false imprisonment conviction, additional letters of support from friends, and copies of evidence already in the record. The Director dismissed this motion, concluding that the Applicant had not established that the prior decision was based upon an incorrect application of law or policy and that it was incorrect based upon evidence in the record at the time of that decision. The Applicant has not overcome this determination on appeal.

A. Positive and Mitigating Factors

The Applicant entered the United States in 1999 and has lived here for 25 years. His family ties include his mother, from whom he derived his U-3 nonimmigrant status, his stepfather, his siblings, and his U.S. citizen fiancée. The record below contained paystubs and tax returns demonstrating the Applicant’s stable work history. The record also included letters of support from Applicant’s family, friends, and colleagues describing him as “conscientious,” “honest,” and state that he “works hard and treats people respectfully.” Further, the record contained evidence demonstrating that the Applicant complied with and completed the sentencing requirements for his 2016 conviction for False Imprisonment. With the Applicant’s motion to reconsider, and again on appeal, he submits a court

¹ The Director requested an original or certified copy of the actual arresting officer’s report, the criminal complaint or charging document from the prosecuting attorney’s office, certified judgement and conviction documents providing the final disposition of any charges stemming from this arrest, and a statement from the Applicant describing the circumstances and his behavior leading up to this arrest.

document indicating that in [] 2021, upon completion of the terms of these sentencing requirements, the California Superior Court dismissed the Applicant's conviction on this charge.²

B. Negative Factors

As the Director noted in denying his U adjustment application, the primary negative factor in the Applicant's case is his criminal history. The record before the Director reflected that in [] 2016, the Applicant was arrested for one count of Felony Domestic Violence and was subsequently charged with one count each of violating sections 273.5(a) (Willful infliction of corporal injury), 236 (false imprisonment), and 242- 243 (battery, defined and battery, punishment) of the Annotated California Penal Code. (West 2016). According to the court document in the record below, in [] 2016 the Applicant pleaded not guilty to the charges of willful infliction of corporal injury and of battery, and no contest to, and was convicted on the charge of false imprisonment. For this conviction he was sentenced to eight days of incarceration, of which he served four and was credited with four, placed under probation for a term of 36 months, ordered to attend a 52-week domestic violence treatment program, to attend Alcoholics Anonymous meetings, to obey the terms of the protective order against the victim served to him in court, and to pay \$720 in fines and restitution to the victim. Per the court records before the Director, in [] 2017 a bench warrant was issued for the Applicant after he failed to appear at several hearings. These court records further show that the terms of the Applicant's probation were modified after he appeared in court in [] 2020, extending his probationary period to [] 2021, and allowing the Applicant to serve the remainder of his probation in Washington.

The police report, submitted with the Applicant's motion before the Director and again on appeal, provides additional detail of the circumstances surrounding this 2016 arrest. According to the responding officers, when they arrived at the Applicant's apartment the Applicant's girlfriend at the time (the victim) and a friend of hers met them, and the victim's friend stated that the Applicant had battered the victim and was still inside the apartment. The victim explained to the officers that she had recently told the Applicant that he needed to move out, and that they had been arguing about this. She stated that when she arrived at the apartment to gather items to spend the night elsewhere, the Applicant began an argument with her, and that when the victim attempted to exit the apartment, the Applicant placed himself in front of the only exit and threatened to strike her with his fists. The victim relayed to the responding officer that she attempted to exit the apartment three times, and that the Applicant "grabbed [her] each time on her upper arms and threw her onto the bed." The police report,

² We note that, although this conviction was dismissed under section 1203.4 of the Annotated California Penal Code, it remains a conviction under section 101(a)(48)(A) of the Act, which provides that:

[t]he term conviction means, with respect to an alien, a formal judgment of guilt of the alien entered by a court, or, if adjudication of guilt has been withheld, where-

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A).

as well as accompanying photos, indicates that she “sustained several approximately finger sized bruises [*sic*] to both her upper arms.”

In written statements below, the Applicant explained that during the incident, he got upset with his girlfriend and pushed her several times. He also stated that initially he had not complied with the conditions of his sentencing, and that he avoided contacting the court because he was scared that he would go to jail and be deported. He further stated that he broke up with his former girlfriend after the 2016 arrest, but they have stayed in touch and now have a good relationship. The Applicant also stated that he was sorry for this arrest which he described as a “dangerous mistake” and that he regretted his actions.

In a supplemental statement submitted with his motion before the Director and again on appeal, the Applicant explains that when the [] 2016 arrest occurred, his relationship with his ex-girlfriend had gotten “really rocky,” and acknowledges that he “let the anger get the best” of him and “grabbed and pushed her several times,” and that she was given a restraining order against him, and that restraining order ended their relationship. However, he explains that they eventually became friends. The Applicant states that he has completed the terms of his sentence, and that the court dismiss his conviction in [] 2021. Court documents included with the Applicant’s motion and on appeal show that the court released him from the terms of his conviction under California law on [] 2021.

C. A Favorable Exercise of Discretion is Not Warranted Based on Humanitarian Grounds, to Ensure Family Unity, or 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 *de novo* review of the record, the Applicant has not made such a showing.

In denying the instant U adjustment application, the Director considered the favorable factors in the Applicant’s case, acknowledging the Applicant’s lengthy residence in the United States, family ties, history of employment, community ties, and completion of the sentencing requirements for his 2016 conviction on the charge of false imprisonment. We further acknowledge evidence showing that in [] 2021, the Petitioner completed the sentencing requirements for his conviction on this charge. However, notwithstanding these factors, the Applicant has not demonstrated that the Director erred when determining that he does not merit a favorable exercise of discretion to adjust his status to that of an LPR. The Director denied his U adjustment application, concluding determined that the Applicant had engaged in behavior that established a “disregard for the laws of this country,” and posed a “risk to public safety,” noting that the Applicant had been convicted of false imprisonment while also filing a request for the adjustment of status based upon his U nonimmigrant status and relation to a relative who was a victim of a qualifying crime.³ The Director also noted that, as the Applicant had not yet provided a copy of the police report for his [] 2016 arrest, she was unable to accurately assess the severity of the Applicant’s risk to public safety.

³ Those seeking U nonimmigrant status must establish, among other requirements, that they were a victim of a qualifying crime including those involving or listed at section 101(a)(15)(U)(iii) of the Act, or “any similar activity” in violation of Federal, State, or local criminal law. We note that false imprisonment is one of the qualifying criminal activities listed in 101(a)(15)(U)(iii) of the Act.

The Applicant contends on appeal that the Director erred in giving “undue weight” to his criminal charge, as, although he “was initially charged with corporal injury, battery, and false imprisonment, he was only convicted of one misdemeanor charge – false imprisonment.” He further asserts that, as California Superior Court exercised its discretion to dismiss this conviction, and that he no longer has any criminal convictions, the incident should be afforded even less negative discretionary weight. He further indicates that, per a statement from his former girlfriend, provided in the record below, there was mutual fighting and the Applicant should not have been arrested.

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). Although we acknowledge that the Applicant was not ultimately charged with corporal injury or battery, and that his conviction for false imprisonment was dismissed in [REDACTED] 2021, this remains a conviction as defined at section 101(a)(48)(A) of the Act. Further, the record indicates that the relevant incident occurred recently, while he was in U status and that he was still serving probation for the false imprisonment conviction during the pendency of his U adjustment application. The seriousness of the Applicant’s conviction for false imprisonment is further reflected by the sentencing requirements ordered by the court, which included eight days of incarceration, of which he served four, 36 months of probation, attendance at 21 Alcoholics Anonymous meetings, completion of a 52-week domestic violence course, and to pay restitution. In addition, the record demonstrates that the Applicant was served a protective order in court and that the court ordered he comply with its terms as part of his sentence. We additionally note that both domestic abuse and false imprisonment are qualifying crimes for the purpose of establishing eligibility for the U nonimmigrant status upon which his U adjustment application is based; this emphasizes the serious nature of the Applicant’s [REDACTED] 2016 arrest and [REDACTED] 2016 conviction.

With regard to the evidence in the record below, we note that the Applicant’s statement therein provided little detail about the circumstances surrounding the incident, and that the Applicant had not provided the police report or other evidence clarifying the circumstances leading up to and surrounding this incident. On motion, and again on appeal, the Applicant explains through counsel, that he did not provide a copy of the police report in the record below because “police reports are inherently unreliable and prejudicial,” but that he is now providing a copy of this report. We acknowledge this argument. However, it is “especially appropriate” for us to consider the factual information contained in police reports, as all relevant factors concerning an arrest and conviction should be taken into account in exercising our discretion. *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988). Here, the police report provides additional support for the Director’s determination that the Applicant’s [REDACTED] 2016 arrest and [REDACTED] 2016 conviction should be afforded significant negative weight as it demonstrates that severity of the incident. For example, the report shows that the Applicant’s girlfriend told the responding officer the Applicant physically restrained her when she attempted to leave the apartment. The photographs accompanying this police report further show that that the Applicant’s girlfriend had bruises on her arms immediately following the incident.

To summarize, due to the Applicant’s 2016 arrest while in U status for felony domestic abuse, which led to charges for corporal injury, battery, and false imprisonment, and ultimately to a conviction for false imprisonment, indicating that the Applicant poses a risk to public safety, the Applicant has not established on appeal that it is in the public interest to adjust his status to that of an LPR. The

Applicant's family ties, community ties, lengthy residence in the United States, employment history, and completion of his sentencing terms, while favorable, are not sufficient to establish that his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the severity and recency of the conduct that led to his arrest. Therefore, the Applicant has not demonstrated that he is eligible to adjust his status to that of an LPR under section 245(m) of the Act based upon the record below. As the Applicant has not shown that the Director's denial of his U adjustment application was incorrect based upon the record below at the time of the denial or based upon an incorrect application of law or policy, he has not overcome the Director's ground for dismissing his motion to reopen on appeal. *See* 8 C.F.R. §103.5(a)(3).

ORDER: The appeal is dismissed.