



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

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

In Re: 22660450

Date: OCT. 25, 2022

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of 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” nonimmigrant status. The Director of the Vermont Service Center (Director) denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), as a matter of discretion. We sustained the Applicant’s subsequent appeal. Upon discovery of additional adverse factors relevant to the Applicant’s eligibility, the Director reopened the proceedings and certified the new denial decision to us for review. We declined the Director’s request for certification, reopened the proceedings on our own motion, and dismissed the appeal. The matter is now before us on a combined motion to reopen and reconsider. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record as the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. The burden of proof is on the applicant to demonstrate eligibility 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).

USCIS may in its discretion adjust the status of an individual lawfully admitted to the United States as a U nonimmigrant to that of an LPR if, among other eligibility requirements, they establish that 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. When exercising its discretion, USCIS may consider all relevant factors, both favorable and adverse, but the applicant ultimately bears the burden of establishing eligibility and demonstrating that discretion should be exercised in their favor. 8 C.F.R. § 245.24(d)(10)-(11). Favorable factors such as family unity, length of residence in the United States, employment, community involvement, and good moral character are generally sufficient to merit a favorable exercise of discretion. *See 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 should submit evidence establishing mitigating equities. 8 C.F.R. § 245.24(d)(11).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Applicant, a citizen of Nicaragua, last entered the United States in June 2009, when he was 13 years old. The Director approved the Applicant's U nonimmigrant status based on abuse by his brother-in-law. The Applicant filed the instant U adjustment application in December 2014. The Director denied the U adjustment application and we sustained the Applicant's subsequent appeal. However, upon the discovery of two additional arrests of the Applicant after our decision on appeal, the Director reopened the matter, denied the Applicant's U adjustment application again, and certified the decision to us for review. In our September 2019 decision, we declined the request for certification, reopened the proceedings due to additional adverse information that arose after our decision on appeal, and dismissed the appeal based on a conclusion that the Applicant did not establish that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest such that he merits a favorable exercise of discretion to adjust his status.

As discussed in our prior decision, which is incorporated here by reference, the record indicates that the Applicant entered the United States in 2007 and 2009 as an A-2 nonimmigrant, with authorization to remain until August 2010. After the expiration of his authorized stay, he remained here unlawfully until receiving U nonimmigrant status in December 2010. We previously noted that as a minor, the Applicant was charged with 23 juvenile offenses and admitted to having committed 13 juvenile offenses. These included, among others, shooting from a vehicle in the direction of a person, inciting riot, possession of a dangerous weapon in school, providing false information to a law enforcement officer, shoplifting, felony possession of a stolen vehicle, and misdemeanor possession of marijuana. 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 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (including, in adverse factors relevant to discretionary relief, "the presence of other evidence indicative of [a noncitizen's] bad character or undesirability as a permanent resident").

As an adult, the Applicant was arrested and charged with five criminal offenses, resulting in one conviction. In [REDACTED] 2017, when he was 20 years of age, he was arrested and charged with misdemeanor possession or use of a controlled substance and misdemeanor possession or use of drug paraphernalia, and the charges were later dismissed. In [REDACTED] 2017, when the Applicant was 21 years old, he was arrested and charged with domestic assault and driving with a suspended license. The relevant police report reflects that during an argument with his 17-year-old niece, the Applicant "removed his belt from his pants . . . [and] whipped the belt across [his niece's] buttocks," leaving

marks on her body. As a result, a protective order was issued against the Applicant in [] 2017. In [] 2017, the Applicant pled guilty to driving on a suspended license, and the domestic assault charge and related protection order were dismissed.

B. Favorable Exercise of Discretion is Not Warranted

As we discussed in our prior decision in this case, a favorable exercise of discretion to grant adjustment of status 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 ties, lengthy residence in the United States, employment, community involvement, and good moral character. *Id.*; 7 *USCIS Policy Manual* A.10(B)(2). However, where adverse factors are present in U-based adjustment of status applications, USCIS weighs all the positive and mitigating equities against the adverse factors present in the case to determine whether an applicant's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest and, accordingly, whether a favorable exercise of discretion is warranted. 8 C.F.R. §§ 245.24(d)(10) and (11).

In our prior decision, we considered in detail the favorable and mitigating factors in the Applicant's case. We noted that the Applicant has lived in the United States since he was 11 years old and has been employed throughout his adulthood. He was the victim of severe physical and mental abuse at the hands of both his father and brother-in-law and received U nonimmigrant status after providing law enforcement with information about his brother-in-law's abuse. The Applicant expressed remorse for the incidents that led to his juvenile detention, and he was released from such detention after completing substance abuse evaluation, counseling, and performing well in educational and therapeutic activities. He is married to a U.S. citizen and, at the time of our decision, had one U.S. citizen child. We acknowledged the Applicant's insight into the personal and family circumstances that contributed to his juvenile and criminal history, evidence of his remorse and efforts at rehabilitation, letters of support from people in his life, and close family ties in this country. However, we concluded that the positive and mitigating factors were outweighed by the Applicant's extensive and serious juvenile offense history and his continued unlawful conduct as an adult.

Additionally, we determined that due to the Applicant's admission to committing domestic assault against his niece, the record indicates that he committed a serious violent crime and has not shown that denial of his adjustment of status would result in exceptional and extremely unusual hardship, as required under 8 C.F.R. § 245.24(d)(11). In U-based adjustment of status, depending on the gravity of the adverse factors, even exceptional and extremely unusual hardship might still be insufficient to establish that the positive and mitigating factors in the record outweigh the adverse factors such that a favorable exercise of discretion is warranted. 8 C.F.R. § 245.24(d)(11); *see also Matter of Jean*, 23 I&N Dec. 373, 383 (A.G. 2002), *aff'd*, *Jean v. Gonzales*, 452 F.3d 392 (5th Cir. 2006) (containing the language ultimately incorporated into 8 C.F.R. § 245.24(d)(11)). USCIS "will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns." 8 C.F.R. § 245.24(d)(11). We previously discussed that the police report relating to the Applicant's [] 2017 arrest indicated that the Applicant "pulled off his belt and hit [his niece] three times before leaving marks on her body" and that he did not contest or directly address this information in the proceedings before us. We

acknowledged that the Applicant's U.S. citizen wife and child live in the United States and he does not have family in Nicaragua, but concluded there was insufficient evidence to support a determination that he would suffer exceptional and extremely unusual hardship if he had to return there.

On motion, the Applicant asserts that we erred in determining that his adult arrest history demonstrates a lack of rehabilitation. He submits a personal affidavit in which he addresses his [] 2017 arrest and charge for misdemeanor possession or use of a controlled substance and misdemeanor possession or use of drug paraphernalia. The Applicant states that that he drove to the mountains in his car with friends and the police arrived and searched everyone. He claims that after the police found marijuana in his friend's possession, they searched the Applicant's car and found a pipe in his friend's belongings inside the car. Because the car belonged to the Applicant, the police ticketed him. According to the Applicant, the charges were dismissed because his friend admitted to the charges and informed the court that the drugs and paraphernalia did not belong to the Applicant. With regard to his [] 2017 arrest and charge for domestic assault against his niece, the Applicant states that he had a disagreement with his 17-year-old niece about her boyfriend, who was in his fifties, and she began screaming at the Petitioner, his spouse, and his spouse's parents. Because his niece would not stop screaming, the Applicant "ended up hitting her across the bottom with a belt," after which his niece claimed to their apartment manager that the Applicant was keeping drugs in the apartment and beating her. According to the Applicant, the police arrived and determined based on interviews that his niece was "making up information to get [him] into trouble," and did not arrest him but issued a protective order. The Applicant alleges that the court ultimately dismissed the charges with prejudice based on evidence that the Applicant's niece attempted to blackmail him by promising to lie to the court about her allegations of abuse if he would pay for her to obtain replacements of immigration documents she had lost. He expresses remorse about hitting his niece, with whom he grew up and considers to be like a sister.

The Applicant also submits new evidence on motion relating to favorable and mitigating factors. He states in his affidavit that he was in a car accident in February 2019, resulting in a concussion, a shoulder injury requiring surgery, and neck pain. He states that the healing process has been difficult and that he required additional surgery on his shoulder due to a delay in starting postoperative therapy. As of the date of his affidavit in October 2019, the Applicant had been unable to work since February 2019. Additionally, he states that he and his wife had a second child in [] 2019 and that she returned to work in September 2019. The Applicant indicates that he, his spouse, and their children live with his mother¹ in order to share expenses, and that they pay his mother to care for their children. He expresses that things have been very difficult for the past few years and he has struggled to provide for his family due to his injuries and the inability to renew his work permit. He notes that he has lived in the United States since he was a child and has a U.S. citizen spouse and two young U.S. citizen children. The Applicant acknowledges that he has made mistakes, but has tried to "get things back on track." Further, the Applicant states that he knows he has "been ticketed a few times but those were for misunderstandings or things that were presented as worse than they were." Accordingly, he requests that he be allowed to remain in the United States with his family. As supporting evidence, the Applicant provides medical records regarding his shoulder injury and surgery, including an October 2019 letter from a doctor stating that he would need to stay in the United States for treatment "for at least a year"; proof of the birth of his second child in [] 2019; copies of his records from

¹ The Applicant explains that his biological mother died when he was a child and that the "mom" to whom he now refers is actually his older sister, who raised him since he was 11 years old.

traffic court; and records showing in relevant part that the [] 2017 assault charges against him were dismissed with prejudice.

Although the Applicant submits new evidence and arguments on motion, he has not overcome our prior determination. We acknowledge the evidence of his injuries resulting from a car accident, his related difficulty in working to support his family, and the birth of his second child. However, this evidence is insufficient to establish that the favorable and mitigating equities in his case outweigh the adverse factors such that he merits a favorable exercise of discretion. 8 C.F.R. §§ 245.24(d)(10) and (11). Our prior decision reflects that we fully considered the favorable and mitigating equities, including his family ties, lengthy residence in the United States, helpfulness to law enforcement after being the victim of abuse, employment history, payment of taxes, hardship to his family, and efforts at rehabilitation, and found them insufficient 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 of his juvenile and adult arrest history. The Applicant offers evidence of some changed circumstances on motion and argues that his adult history of arrests does not demonstrate a lack of rehabilitation, but he does not address the full grounds for our dismissal of his appeal or provide sufficient evidence to overcome our conclusions.

As we previously discussed, although the Applicant was not convicted for assault against his niece, he admitted committing the relevant act and has not disputed the facts as discussed in our last decision. Reliance on an arrest report in adjudicating discretionary relief—even in the absence of a criminal conviction—is permissible provided that the report is inherently reliable and its use is not fundamentally unfair. *See Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) (“[T]he admission into the record of . . . information contained in the police reports is 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.”). We determined in our prior decision that consideration of this evidence was not fundamentally unfair, and the Applicant does not dispute that determination on motion or contest the facts therein. Instead, he states that he lost his temper with his niece and that the case was dismissed after the court received evidence that his niece attempted to blackmail the Applicant by offering to lie in court in exchange for his financial assistance. Moreover, the Applicant does not address on motion our determination that his assault on his niece was a serious violent crime for which he must show that denial of his adjustment of status application would result in exceptional and extremely unusual hardship pursuant to 8 C.F.R. § 245.24(d)(11).

Furthermore, although he expresses remorse in his affidavit on motion, the Applicant does not appear to take full responsibility for his actions but instead states that he has “been ticketed a few times but those were for misunderstandings or things that were presented as worse than they were.” Additionally, the Applicant alleges that we improperly weighed his adult arrest history but does not address on motion his extensive juvenile offense history and its significant role in our prior determination. The Applicant does not argue on motion that our discretionary determination, which was based on all of the evidence in the record including his adult arrest history and multiple juvenile offenses as well as consideration of the favorable and mitigating factors, was incorrect at the time of our decision, as required for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). The Applicant has not overcome our prior determination. Accordingly, he has not demonstrated his eligibility for adjustment of status to that of an LPR pursuant to section 245(m) of the Act.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.