



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

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

In Re: 22530552

Date: SEP. 06, 2022

Motion on Administrative Appeals Office Decision

Form I-485, Application to Adjust Status of U Nonimmigrant

The Applicant seeks to become a lawful permanent resident (LPR) based on his “U” nonimmigrant status as a victim of qualifying criminal activity 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 to Adjust Status of U Nonimmigrant (U adjustment application), and the Applicant then filed an appeal with us. We dismissed both this appeal and a subsequently filed motion to reopen. The Applicant now files a second motion to reopen and submits new evidence. Upon review, we will dismiss this motion.

**I. LAW**

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and establishes eligibility for the benefit sought.

U.S. Citizenship and Immigration Services (USCIS) may in its discretion adjust the status of individuals lawfully admitted to the United States as U nonimmigrants 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 applicants ultimately bear 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).

The Applicant bears the burden of establishing eligibility, and must do so 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, 375-76 (AAO 2010). An applicant may submit any credible evidence for us to consider; however we determine, in our sole discretion, the weight to give that evidence. 8 C.F.R. § 214.11(d)(5).

## II. ANALYSIS

The record reflects that the Applicant is a native and citizen of Mexico who last entered the United States without inspection in June 1996. He was granted U-1 nonimmigrant status in October 2014, valid until September 2018, and timely filed his U adjustment application in November 2017. The Director denied this application, concluding that the Applicant had not established that a favorable exercise of discretion was warranted in his case because the positive factors in the record did not outweigh the negative discretionary weight afforded the Applicant's arrests in 2002 and 2003 for domestic abuse and in 2016 for misdemeanor child abuse. The positive factors considered by the Director include the following: the Applicant's long residence in the United States; strong family ties including his LPR spouse and four U.S. citizen children; hardship to his spouse if he is not granted relief due to her medical condition for which he provides assistance; his employment; and his payment of taxes. The Director noted specifically that the Applicant had not proffered evidence sufficient to clarify the circumstances leading to these arrests and that it appeared he had failed to disclose this criminal history on his Form I-918, Petition for U Nonimmigrant Status, (U petition), and U adjustment application.

The Applicant then filed an appeal with us. In our decision dismissing this appeal, incorporated here by reference, we acknowledged the positive factors identified in the Director's decision; we further acknowledged his appellate argument with regard to the hardship that his spouse and son would endure if he were removed from the United States.<sup>1</sup> We determined, however, that the Applicant's favorable and mitigating equities did not outweigh his adverse factors, which included his arrests for domestic abuse and for misdemeanor child abuse, and his failure to disclose his criminal history on his U petition and his U adjustment application. We noted that the record lacked an affidavit from his son about his 2016 arrest for misdemeanor child abuse, that his spouse did not address the 2002 or 2003 incidents that led to his arrests for domestic abuse, and that the Applicant had not submitted any other evidence to provide more detail or to corroborate his account of these events. We further indicated that the relevant evidence in the record, including affidavits and a psychological evaluation, provided little detail about the incidents and his behavior leading to them and that the record remained unclear as to the circumstances leading up to these events.

The Applicant then filed a motion to reopen with us. In our decision dismissing this motion, also incorporated here by reference, we reviewed the newly submitted evidence including, in relevant part, a statement from C-S-<sup>2</sup>, his son and the victim of the 2016 incident, in which C-S- explained that he drove to school without a permit, ignored missed calls from his parents, and that they were upset with him when he arrived home. We noted, however, that this statement did not provide details about the actual abuse that C-S- experienced. We again indicated that the record contained little detail about the

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<sup>1</sup> We addressed the evidence submitted to establish these hardships as well.

<sup>2</sup> Initials are used to protect the privacy of the individual.

incidents and the Applicant's behavior leading to his arrests, how the police became involved, and his interaction with law enforcement either at the scene or afterwards. Accordingly, we determined that the previously identified positive discretionary factors in the Applicant's case, including the hardships to his spouse and son, were not sufficient to outweigh the negative weight afforded his criminal history.

On second motion, the Applicant does not offer additional evidence to address our concerns regarding his 2002 and 2003 arrests. With regard to his 2016 arrest, he submits a letter from the attorney who represented him in court for his 2016 arrest offering additional information about the circumstances surrounding this arrest.<sup>3</sup> In this correspondence, the Applicant's former counsel explains that the Applicant's son contacted the police after he "used a belt to whip" C-S-. Counsel explains that there were visible welts "on the child immediately following the corporal punishment," and that the responding officer obtained a warrant against the Applicant. Counsel further recounts that a juvenile court counselor, subpoenaed to testify on the Applicant's behalf, indicated in court that C-S- was out of control and that she supported the use of this corporal punishment. Counsel additionally notes that the District Attorney subsequently declined to prosecute the case and contends that he could have obtained an expungement of the charge from the Applicant's record.

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 charged in the 2016 incident, the record indicates that it occurred recently, while he was in U status. Further, the details of the abuse, such as the presence of raised welts on his son's skin, indicate that the incident was serious in nature. We therefore assign the Applicant's 2016 arrest significant negative weight in our discretionary analysis.

In reviewing whether a favorable exercise of discretion is warranted on motion, we note the Applicant's favorable and mitigating equities as identified in our preceding decision. However, the Applicant has not addressed our concerns regarding his 2002 and 2003 arrests, and upon review of the evidence submitted with regard to the 2016 arrest, we afford it significant negative weight. The Applicant therefore has not overcome our prior determination that he has not established that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Accordingly, the Applicant has not demonstrated his eligibility for the adjustment of status to that of an LPR pursuant to section 245(m) of the Act; he further has not met the requirements for a motion to reopen.

**ORDER:** The motion to reopen is dismissed.

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<sup>3</sup> We note that this correspondence introduces an inconsistency into the record. As we indicated previously, the Applicant stated during his psychological evaluation that a neighbor contacted the police to report that he had hit his son. However, according to the Applicant's former counsel, it was the Applicant's son who contacted police. The Applicant does not offer other evidence, including the incident reports, or other relevant documents, to clarify this inconsistency.