



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

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

In Re: 23925367

Date: JAN. 3, 2023

Appeal of Nebraska Service Center 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 Nebraska Service Center denied the U adjustment application, concluding that the record did not establish that the Applicant merited a favorable exercise of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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

To be eligible for adjustment of status as a U nonimmigrant, the applicant must demonstrate, among other eligibility criteria, that they were lawfully admitted to the United States as a U nonimmigrant and continue to hold such status at the time of application. 8 C.F.R. § 245.24(b)(2)(i), (ii).

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”). Depending on the nature of any adverse factors, the applicant may be required to demonstrate clearly that the denial of adjustment of status would result in exceptional and extremely unusual hardship, but such a showing may still be insufficient if the adverse factors are particularly grave. *Id.* For example, 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. *Id.*

II. ANALYSIS

A. Procedural History and Relevant Evidence

The Applicant’s U petition was approved in 2013 based on his family member’s victimization and assistance to law enforcement. The Applicant filed the instant U adjustment application in October 2019. The Director denied the U adjustment application in November 2020, concluding that the Applicant had not established that he merited a favorable exercise of discretion due to his criminal history, particularly an arrest for willfully inflicting corporal injury upon a former girlfriend in [REDACTED] 2018 in [REDACTED] California. The Director also observed that the Applicant had been arrested in [REDACTED] 2014 for resisting, delaying, or obstructing a public officer and in [REDACTED] 2015 for driving under the influence of alcohol.

The Applicant appealed this decision and submitted a December 2020 report from Accurate, a background check service, and contends that the report encompasses criminal records for the previous seven years for multiple of his aliases for [REDACTED] [REDACTED], and a multi-jurisdiction index search. In addition, the Applicant submitted a letter from his ex-girlfriend and alleged victim related to the [REDACTED] 2018 arrest. The ex-girlfriend stated that she dropped the charges against the Applicant and affirmed that he “has worked to have a better relationship with me after the incident even though we were no longer together.” She also provided additional details about the Applicant’s relationship with their daughter, stating that without the Applicant, she would not only lose “a great dad but a role model and loving supporter.” He also submitted new letters of support. We therefore remanded the matter for the Director to review the new evidence in the first instance and again consider whether the Applicant merited a favorable exercise of discretion.

In a decision issued in January 2022, the Director determined that the record, even as supplemented on appeal, indicated that the Applicant was a threat to public safety and the well-being of others, and therefore he still had not shown that he warranted a favorable exercise of discretion. Specifically, the Director found that the Applicant had not submitted additional details regarding the [REDACTED] 2018 arrest, such as the alleged victim’s injuries, the reason she called the police, or the reason the Applicant

was arrested.¹ The Director noted that the California statute for the crime with which the Applicant was charged required the willful infliction of a “traumatic condition” “such as a wound, or external or internal injury”. California Penal Code §273.5. Thus, the Director concluded that the Applicant had not corroborated his claim that he had not been the aggressor in the incident. The Director additionally observed that the Accurate background check did not appear to have access to law enforcement agencies or arrest records.

On this appeal, the Applicant argues that he warrants a favorable exercise of discretion because the Director improperly weighed the negative equities in his case. In support of his appeal, he submits a records check from the Superior Court of California for the [redacted] in [redacted] California; a criminal records search from the Superior Court of California for [redacted] in [redacted] California²; and a document from the Hall of Justice in [redacted] California regarding a [redacted] 2014 violation that indicates the violation was dismissed.

B. A Favorable Exercise of Discretion is Not Warranted

The Applicant bears the burden of establishing that he merits a favorable exercise of discretion. 8 C.F.R. § 245.45(d)(11). Upon de novo review of the record, as supplemented on appeal, the Applicant has not made such a showing.

We acknowledge the favorable considerations in the Applicant’s case, including his long-term residence in the United States; his lack of ties to his native country; the presence of his minor U.S. citizen child; his expressions of remorse for his criminal history; the hardships he would experience were he to return to Mexico; his employment and payment of taxes; and support letters from family members and associates attesting to the Applicant’s family bonds, character, and work ethic. However, we find these positive factors do not outweigh the Applicant’s criminal history, considering the severity of conduct implicated in the crime for which he was arrested.

Discretionary determinations in the U adjustment context are guided by section 245(m)(1)(B) of the Act and 8 C.F.R. § 245.24(d)(11), which provide us with the authority to consider all relevant factors in determining whether an applicant warrants a favorable exercise of discretion. 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). In this case, the Applicant was arrested for willfully inflicting corporal injury upon a former girlfriend while he held U nonimmigrant status, less than a year prior to filing the instant U adjustment application. The record indicates, and California Penal Code §273.5 requires, that the conduct for which the Applicant was arrested involves physical harm to a cohabitant, former cohabitant, or “someone with whom the offender has, or previously had, an engagement or dating relationship”. The Applicant’s arrest concerns the very type of behavior that U nonimmigrant status seeks to protect against. *See* section 101(a)(15)(U)(iii) and 8 C.F.R. § 214.14(a)(9) (including, as qualifying criminal activity, “domestic violence”); *see also* Interim Rule, *New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007) (“In

¹ While the Director noted the submission of a records search from the [redacted] California Police Department, the location where the Applicant was arrested, the search was conducted on a misspelling of the Applicant’s name.

² This search was conducted on a different version of the Applicant’s name from this name in the instant application.

passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence . . . while offering protection to victims of such crimes.”).

While the record indicates that the Applicant was not convicted for this crime, the lack of clarity in the record regarding the Applicant’s behavior leading to his arrest precludes us from assessing whether he poses a risk to public safety. We note that the Applicant was asked before the Director to provide an arrest report and criminal complaint or charging documents from the prosecuting attorney’s office. On appeal, he has still not addressed this evidentiary deficiency identified by the Director. He has submitted criminal records checks, but some of the checks were not conducted on all versions of the Applicant’s name, including his true name as professed on the instant application. If such documents exist but cannot be obtained, the Applicant has also not submitted evidence indicating that he attempted, but was unable, to procure such documents. *See* 8 C.F.R. § 103.2(b)(2)(i) (stating, in pertinent part, that if a required document does not exist or cannot be obtained, an applicant must demonstrate this and submit pertinent secondary evidence). The Applicant has also not submitted a detailed description of the events leading to his arrest or other corroborating evidence to show that his behavior was not sufficiently severe as to warrant a favorable exercise of discretion.

The Applicant argues on appeal that USCIS is incorrectly presuming his guilt when he was never convicted. Regardless of the outcome of the arrest, USCIS may consider the totality of the record, which includes consideration of the whole of the Applicant’s behavior. Evidence of criminal conduct that has not culminated in a final conviction may nonetheless be considered in discretionary determination. *See Matter of Thomas*, 21 I&N Dec. 20.

In sum, we agree with the Director that, due to the nature, recency, and seriousness of the Applicant’s arrest history, as well as the lack of sufficient evidence of rehabilitation, the favorable and mitigating equities remain outweighed by the adverse factors and the Applicant has not demonstrated by a preponderance of the evidence that he merits a favorable exercise of discretion to adjust his status.

III. CONCLUSION

The Applicant has not demonstrated that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted. Accordingly, the Applicant is ineligible to adjust his status to that of LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.