



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

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

In Re: 23675712

Date: JAN. 5, 2023

Appeal of Vermont Service Center Decision

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 denied the application, concluding that the record did not establish that a favorable exercise of discretion was warranted because the Applicant’s positive and mitigating equities did not outweigh the adverse factors in his case. The matter is now before us on appeal. On appeal, the Applicant submits additional evidence and reasserts his eligibility for the benefit sought. 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**

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 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, a native and citizen of Mexico, last entered the United States without inspection, admission, or parole in April 2001. In October 2012, USCIS granted the Applicant U nonimmigrant status, based on a felonious assault he suffered in 2000. The Applicant timely filed the instant U adjustment application in September 2017. The Director denied the application, concluding that the Applicant had not demonstrated that 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 because his criminal history, namely his arrests for assault in the fourth degree (domestic abuse), harassment, resisting arrest, driving with a suspended license, rape in the first degree, sodomy in the first degree, and sexual abuse in the first degree, outweighed the positive factors in his case. The Applicant has not overcome this determination on appeal.

### A. Favorable and Mitigating Equities

The Applicant is 53 years old and has lived in the United States for approximately 22 years. The Applicant’s family ties in the United States include his partner<sup>1</sup> and six children, five of whom are U.S. citizens. The Applicant provided evidence of business ownership and payment of taxes in 2013, 2014 and 2015. He also provided evidence that he has attended Alcoholics Anonymous (AA) since 2002. In his statement, the Applicant states that he wants to be there for his children, including one of his sons who is struggling with substance abuse and legal issues. He further states that he wants to live without the threat of removal and travel to Mexico to visit his elderly mother. In letters of support from his local Alcoholics Anonymous (AA) chapter, friend, and business client, the Applicant is described as an active member, a valued friend and a hardworking businessman

### B. Adverse Factors

The Applicant’s primary adverse factor is his criminal history. The record reflects that the Applicant was cited in [REDACTED] 1995 in [REDACTED] Oregon for driving under the influence of intoxicants (DUI) in violation of section 813.010 of the Oregon Revised Statutes Annotated (ORS). The charge was later dismissed. The Applicant was again arrested for DUI in [REDACTED] 1996 and [REDACTED] 1997. He pled guilty to both incidents. The Applicant did not submit an arrest report or a statement describing the circumstances that led to either arrests.

The Applicant was arrested in [REDACTED] 1997 in [REDACTED] for criminal driving while license suspended or revoked in violation of section 811.182 of the ORS. He pled guilty and was sentenced to one year of probation.

The Applicant was arrested in [REDACTED] 1998 in [REDACTED] for assault in the fourth degree (domestic abuse) and harassment in violation of sections 163.160 and 166.065 of the ORS. In his statement, the Applicant admitted that he argued with his partner after she told him that she was

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<sup>1</sup> The Applicant’s partner’s immigration status is unknown.

having an affair. In the incident report from the [ ] Police Bureau, a responding officer noted that the Applicant had an argument with his partner. At some point, the Applicant “stood up, took [two] steps and slapped [his partner] right across her face.” The Applicant’s partner put her hands up, covered her face and began to cry. A witness to the argument drove the Applicant’s partner to her mother’s house. Approximately fifteen minutes later, the Applicant arrived at the house and asked to speak with his partner. The partner’s mother then called the police. Upon his arrival, the responding police officer observed that the Applicant’s partner’s left ear was slightly puffy and red. He arrested the Applicant who admitted that “without thinking, he caused her physical injury.” When asked why he hit her, the Applicant stated that it was “stress and an ‘emotional thing.’” He pled guilty to assault in the fourth degree. The charge for harassment was dismissed. The Applicant was placed on three years’ probation and ordered to pay a \$500 fine. A month later, the Applicant’s probation officer reported that the Applicant had failed to attend follow-up appointments for domestic violence intervention counseling. He recommended revocation of the Applicant’s deferred sentence and 30 days incarceration. A judge later revoked the Applicant’s deferred sentence and issued a warrant for his arrest.

The Applicant was arrested in [ ] 1998 in [ ] for assault in the fourth degree (domestic abuse) and harassing communication in violation of sections 163.160 and 166.065 of the ORS. A custody report from the [ ] Police Bureau reflects that an officer responded to the Applicant’s residence. The Applicant’s former partner told the officer that the Applicant “threw the decorated Christmas tree out of the back door, and began breaking items in the living room.” The Applicant “then struck [his former partner] in the face with his open hand, causing pain and swelling inside [her] upper lip. The blow loosened [the Applicant’s partner’s] right front tooth.” The officer observed “a reddened and swollen area inside [the Applicant’s former partner’s] upper lip, and [her] right front tooth was loose and discolored.” The Applicant’s former partner told the officer that “she [wa]s very afraid [the Applicant would] return and harm her.” In his statement, the Applicant does not address the specific circumstances that led to this arrest. The evidence in the record indicates that he was given 120 days’ house arrest with an electronic monitoring device. He was placed on three years’ probation and ordered to have no contact with the victim. He was also ordered to complete a domestic violence intervention program and pay a \$565 fine. The Applicant subsequently violated the terms of his probation by failing to appear for his arraignment and contacting his former partner. A judge issued a warrant for the Applicant’s arrest that was later recalled after he paid a fine.

The Applicant was arrested in [ ] 2001 in [ ] for assault in the fourth degree (domestic abuse) and resisting arrest in violation of sections of 163.160 and 162.315 of the ORS. In his statement, the Applicant explained that he was at a bar with his partner. He stated that he had been drinking all day and that his partner wanted him to leave. A security guard approached them and asked them to leave the bar. The Applicant’s partner pushed him to leave and he fell to the floor. The security guard then called the police. When the police arrived, the Applicant fled because he had outstanding warrants. The police subsequently found the Applicant and placed him under arrest. He was charged with assault in the fourth degree and resisting an officer. The charges were ultimately dismissed.

The Applicant was cited in [ ] 2004 in [ ] Oregon for criminal driving while suspended/revoked in violation of section 811.182 of the Oregon Vehicle Code (Or. Veh. Code). The

record indicates that the Applicant was convicted of an unknown lesser offense. The Applicant did not submit evidence of or a statement explaining the circumstances that led to this citation.

Finally, the Applicant was arrested in [ ] 2008 in [ ] for rape in the first degree, sodomy in the first degree, and sexual abuse in the first degree. In a statement submitted on appeal, the Applicant recalled that he was at an AA meeting when police officers told him that he was under arrest for raping and sexual abusing his partner's daughter and granddaughter. While incarcerated, the Applicant maintained his innocence and refused to accept any of the plea agreements offered by the prosecutor. The Applicant was later transferred to the [ ] Detention Center, where he remained for eight months until he paid 10% of a \$500,000 bond. The record indicates that all three charges were dismissed.

The Applicant expressed remorse for his criminal history. In a statement submitted before the Director, the Applicant stated that he has accepted responsibility for his actions and has changed significantly since his arrests. He maintained that his sole focus now is working to provide for his toddler son and mother.

#### C. A Favorable Exercise of Discretion is Not Warranted Based on Humanitarian Grounds, to Ensure Family Unity, or in the Public Interest

On appeal, the Applicant asserts, among other things, that "the finding that he has had a clear disregard for the laws of the United States is an overbroad characterization as he had criminal behavior for a couple of years of his presence" and a driving violation due to license issues in 2004. In support of his assertions, he submits statements and court documents regarding his [ ] 2001 and [ ] 2008 arrests, a risk assessment from a licensed psychologist, and letters of support from family and friends. The Applicant specifically highlights the psychologist's findings that he "does not have any risk factors for continued violence or criminal behavior and that his alcohol dependence is in clear remission."

While we acknowledge the Applicant's statements on appeal, they are insufficient to establish that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. In this case, the record indicates that the Applicant has three separate DWII arrests resulting in two convictions. DWII is both a serious crime and a significant adverse factor relevant to our consideration of whether the Applicant warrants a favorable exercise of our discretion. *See Matter of Siniauskas*, 27 I&N Dec. 207, 209 (BIA 2018) (finding that a driving under the influence (DUI) charge to be a significant adverse consideration in determining a respondent's danger to the community); *Matter of Castillo-Perez*, 27 I&N Dec. 664, 666, 671 (A.G. 2019) (discussing the "reckless and dangerous nature of the crime of DUI" and concluding that evidence of two or more DUI convictions establishes a rebuttable presumption that an individual lacks good moral character under section 101(f) of the Act). Given the seriousness and repeated nature of the Applicant's DWII arrests and convictions, we agree with the Director that they constitute serious adverse factors and demonstrate a disregard for U.S. criminal laws and the well-being of others.

Additionally, the Applicant was involved in two domestic disputes with his former partner, during which he physically assaulted her. The Applicant's former partner sustained injuries including a lacerated upper lip and a loose tooth. The Applicant's conduct during these incidents involves the very

type of behavior that U nonimmigrant status seeks to protect against. *See section 101(a)(15)(U)(iii) of the Act 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 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.”).*

We recognize statements from the Applicant and C-P-M-<sup>2</sup> stating that the Applicant’s [ ] 2008 arrest for rape, sodomy and sexual abuse was based on false allegations. We further recognize that all three charges were ultimately dismissed “in the best interests of justice.” However, the fact that the Applicant was not convicted of the underlying charges, or that the charges were ultimately not pursued, does not equate with a finding that the underlying conduct or behavior leading to those charges did not occur. *See 8 C.F.R. § 245.24(d)(11)* (stating that USCIS may take into account all factors in making its discretionary determination and that it “will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of certain classes of crimes”); *see also Matter of Thomas*, 21 I&N Dec. 20, 23-24 (BIA 1995) (holding that evidence of criminal conduct that has not culminated in a final conviction may nonetheless be considered in discretionary determinations). Moreover, even if we discounted the [ ] 2008 charges, the fact remains that the Applicant has several arrests and convictions on charges of DUII, assault and driving while suspended/revoked — serious offenses that weigh heavily against the Applicant.

Lastly, the risk assessment, completed in March 2022, which highlights the Applicant’s sobriety, positive interpersonal relationships, and lack of law enforcement contact for many years does not overcome the basis of the Director’s decision. In this instance, the U adjustment application was denied as a matter of discretion, concluding that there was insufficient evidence to show that the positive and mitigating equities outweighed the negative factors in the case. The risk assessment, while relevant in the balancing of his positive and mitigating equities and adverse factors, does not lessen the seriousness of the Applicant’s criminal history, which remains a negative factor outweighing the positive and mitigating equities present in his case such that a favorable exercise of discretion is not warranted.

In sum, we acknowledge the record contains positive and mitigating equities. Nonetheless, in light of the nature and seriousness of the Applicant’s criminal history, we agree with the Director that 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 he warrants a positive exercise of our discretion to adjust his status to that of an LPR under section 245(m) of the Act. The application will remain denied.

### III. CONCLUSION

The Applicant has not established that his adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, he has not demonstrated that he is eligible to adjust his status to that of an LPR under section 245(m) of the Act.

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

**ORDER:** The appeal is dismissed.