



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

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

In Re: 28077852

Date: SEP. 21, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to become a lawful permanent resident based on her “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 application, concluding that the record did not establish that the Applicant’s adjustment of status was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. 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

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. 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). 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”).

II. ANALYSIS

The Applicant, a citizen of Mexico, was granted U nonimmigrant status from April 2017 until April 2021. She filed her Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application) in June 2020, and the Director denied her U adjustment application in January 2023.

A. Favorable and Mitigating Equities

In the record below, the Applicant submitted evidence of her favorable equities. The Applicant entered the United States in 2002 and has resided here since that time. She has two children, one who is a United States citizen and was diagnosed with Trisomy 21, or Down Syndrome. The Director also noted that the Applicant was helpful in the investigation in connection with the qualifying criminal activity of which she was a victim, that she was employed and paid her taxes, and that the letter from the Applicant's son's doctor indicated that he requires continued treatment and would be negatively affected if she was not in the United States.

With her appeal, the Applicant also submits new evidence, including a letter from the Department of Probation & Court Services in [REDACTED] Illinois, which indicates that the Applicant remains on probation, but has completed programs required by her criminal sentencing. She also includes a letter from her oldest son, who states that the Applicant goes above and beyond for her children, and that he has only ever had her in his life. Her son states that she has changed her life to be able to care for his disabled younger brother. The Applicant also submits a letter from her son's godmother, who states that the Applicant is a good mother, friend, and person. Finally, she provides a letter from a church, indicating that she is an enrolled and active member.

B. Adverse Factors

The primary adverse factor is the Applicant's criminal history. The record reflects that the Applicant was arrested in [REDACTED] 2021, and charged with endangering the health or life of a child in violation of Illinois state law. The documents provided by the Applicant indicate that she left her youngest son home alone in an enclosed area for an extended period of time. In [REDACTED] 2022, the Applicant pleaded guilty, and received a sentence of two years of probation.

In the Director's decision, they noted that the Applicant's arrest occurred while she was in U nonimmigrant status, and while her U adjustment application was pending. The decision further noted that she had not provided evidence to support a completion of the terms of her sentencing agreement and considered these significant negative factors.¹

¹ The Director's decision notes the presence of what appeared to be an additional arrest in [REDACTED] 2022; however, the Applicant had submitted a copy of her FBI fingerprint record which does not indicate an additional arrest on that date. The Director further stated that the Applicant's "arrests" indicated a "pattern of behavior" which they considered a significant negative factor. As the Applicant was only arrested one time, in [REDACTED] 2021, we withdraw the Director's determination that this incident created a "pattern of behavior." However, while we withdraw this aspect, the Applicant's conduct remains a significant negative factor for the reasons explained herein.

C. A Favorable Exercise of Discretion is Not Warranted

As previously noted, the Applicant bears the burden of establishing that she merits a favorable exercise of discretion on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. 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 have considered the favorable factors in this case. We acknowledge that the Applicant has submitted evidence relating to family unity and humanitarian grounds: she has lived in the United States since 2002 and has family ties in this country—in particular, two children, one who is a United States citizen and has special needs. In addition, the Applicant has submitted evidence of employment and supporting letters to indicate that she is hard working and takes care of her children. However, we also note that the Applicant has not submitted a personal statement, either in response to the Director’s request for evidence or here on appeal, to explain her actions in relation to her arrest or express remorse.

On appeal, the Applicant submits a brief. In her brief, she contends that the only negative factor in the Director’s decision is her guilty plea. Her attorney states that the Applicant has expressed remorse and points to an “Exhibit D,” which is a letter already included in the record regarding her youngest son’s medical condition from [REDACTED] Counsel’s unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (“statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight”). As noted, our review of the record does not indicate that the Applicant has provided a personal statement relating to her arrest.

The Applicant further contends that the crime she plead guilty to is not considered a crime involving moral turpitude; however, the Director’s decision did not imply that it was, and that was not a factor in the decision. The Director did take into account the fact that the crime occurred while the Applicant’s U adjustment application was pending, and further, that she had not completed the requirements of her guilty plea. An applicant for discretionary relief “who has a criminal record will ordinarily be required to present evidence of rehabilitation before relief is granted as a matter of discretion.” *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991); *see also Matter of Marin*, 16 I&N Dec. 581, 588 (BIA 1978) (emphasizing that the recency of a criminal conviction is relevant to the question of whether rehabilitation has been established and that “those who have recently committed criminal acts will have a more difficult task in showing that discretionary relief should be exercised on their behalf”). To determine whether an applicant has established rehabilitation, we examine not only the applicant’s actions during the period of time for which they were required to comply with court-ordered mandates, but also after successful completion of them. *See U.S. v. Knights*, 534 U.S. 112, 121 (2001) (recognizing that the state has a justified concern that an individual under probationary supervision is “more likely to engage in criminal conduct than an ordinary member of the community”). Further, when an individual is on probation, they enjoy reduced liberty. *See, e.g., Doe v. Harris*, 772 F.3d 563, 571 (9th Cir. 2014) (noting that, although a less restrictive sanction than incarceration, probation allows the government to “impose reasonable conditions that deprive the offender of some freedoms enjoyed by law abiding citizens”) (internal quotations omitted); *U.S. v. King*, 736 F.3d 805, 808-09 (9th Cir. 2013) (“Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled.”) (internal quotations

omitted). The record reflects that the Applicant, while she has completed some of the requirements resulting from her guilty plea, remains on probation.

Further, 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. at 584-85. The Applicant's arrest, guilty plea, and subsequent conviction occurred while she was in U nonimmigrant status, and while her U adjustment application was pending. As such, we determine that the Director was correct in assigning the Applicant's conduct significant negative weight.

The Applicant has not demonstrated that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest and, accordingly, that she merits a favorable exercise of discretion. Consequently, the Applicant has not established that she is eligible to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.