



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

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

In Re: 15860213

Date: JUN. 08, 2022

Appeal of Vermont Service Center Decision

Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant

The Petitioner, who was granted lawful permanent residency based on her “U-1” nonimmigrant status, seeks immigrant classification of the Derivative, her spouse, as a qualifying family member under section 245(m)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m)(3). The Director of the Vermont Service Center denied the Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant (U immigrant petition). The matter is now before us on appeal, and the Petitioner submits a brief and new evidence. The Administrative Appeals Office (AAO) reviews 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 remand the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a qualifying family member who has never held U nonimmigrant status provided that: the U-1 petitioner has gained his or her lawful permanent residency; and the granting of such status would avoid extreme hardship to the U-1 petitioner or qualifying family member. Section 245(m)(3) of the Act; 8 C.F.R. § 245.24(h)(1)(iv).

The U-1 petitioner bears the burden of establishing that discretion should be exercised in his or her favor, and USCIS may take into account all factors when making its discretionary determination. 8 C.F.R. § 245.24(h)(1)(v). Where adverse factors are present, the U-1 petitioner should submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.24(h)(1)(v); *see also* 7 USCIS Policy Manual A. 10(B)(2), <https://www.uscis.gov/policy-manual> (providing, as guidance, that discretionary determination requires weighing of both positive and negative factors, including: eligibility; immigration status and history; family unity; length of residence in United States; business and employment; and community standing and moral character).

II. ANALYSIS

The Director granted the Petitioner lawful permanent residency in June 2018. In May 2018, she filed the instant U immigrant petition on behalf of the Derivative. The Director denied the U immigrant petition, concluding that the Petitioner did not meet her burden of demonstrating that the Derivative

warranted a favorable exercise of discretion. The Director acknowledged and considered the following positive and mitigating equities present in the record: the Derivative's participation in the community, his sobriety, his support for the Petitioner and her children, his employment, and other factors. Against these equities, the Director weighed the Derivative's citations for driving without a license and disorderly conduct, convictions for drinking and driving, jail time, fines levied, and probation ordered. After considering the entire record, the Director found that the Derivative's criminal history was a serious adverse factor that outweighed the positive and mitigating equities such that a favorable exercise of discretion was not warranted.

On appeal, the Petitioner submits arguments and additional evidence in response to the Director's decision. The Petitioner contends that the Director's decision afforded an inappropriate amount of weight to the adverse factors in the Derivative's case while improperly weighing the positive and mitigating equities. She asserts that the Director mischaracterized the Derivative's criminal history, and also notes that numerous equities in the record were not given due consideration. She argues that the Director also failed to acknowledge the Derivative's successful rehabilitation from alcoholism and his lack of serious criminal history in the past 15 years. In support of these assertions, the Petitioner submits eight new letters from friends who have known the Derivative for at least 10 years and attest to his sobriety, rehabilitation, and lack of criminality.

The adverse factors in this case relate to the Derivative's criminal history. The record reflects that the Derivative has been arrested or convicted on six occasions while living in the United States. As noted by the Director, the Derivative was arrested twice for disorderly conduct, in 2002 and 2008. The Director was unable to determine the severity of these arrests because the record did not contain police reports or court records. In his statement, the Derivative states that he was arrested for being intoxicated and he did not recall where or when he was arrested because he was too intoxicated. The Derivative was arrested for drinking and driving three times from [REDACTED] 2004 to [REDACTED] 2005. In a [REDACTED] 2004 arrest for drunk driving, the Derivative was convicted and sentenced to six days in jail and three years of probation. In a [REDACTED] 2005 arrest for drunk driving, the Derivative was convicted and sentenced to 120 days in jail and three years of probation. In a [REDACTED] 2005 arrest for drunk driving, the Derivative was convicted and sentenced to 120 days in jail and three years of probation. The last time the Derivative was arrested occurred in [REDACTED] 2013, when the Derivative was involved in a traffic accident. The police arrested him because he was driving without a license and for outstanding matters stemming from one of his 2005 drinking and driving convictions.

With regard to positive equities, the Petitioner acknowledges that the Director generally considered the Derivative's residence in the United States since 2001, his employment and tax records, and his wife and U.S. citizen children as positive equities in his case. The Director also specified that the Derivative's sobriety was a positive equity. Now, the Petitioner asserts that the decision does not reflect meaningful consideration of the scope of those and other relevant positive and mitigating equities.

The Petitioner submitted evidence, in the form of a statement from the Derivative, detailing his past struggles with alcoholism as well as his rehabilitation. This statement explains that during the Derivative's string of criminality, he was an alcoholic. The Derivative stated that since 2009 or 2010, he has remained sober, become more involved in the community, and refrained from criminal activity. Also, in the record was a letter from the General Pastor at his church. The letter described that since

2010, the Derivative has gradually taken on increased responsibility to the church that culminated in his election as a deacon. The pastor expressed knowledge of the Derivative's alcoholism in the past and stated that he "has overcome that vice."

On appeal, the Petitioner submits eight additional letters from community members and church affiliates. Each letter speaks to the Derivative's rehabilitation from alcoholism as well as his increased participation and visibility in the community. The Derivative contends that he has had no further interaction with law enforcement, aside from a driving without a license violation, since his last arrest in 2008 and the record establishes that he has had no further criminal convictions since 2008. Considering this, the Petitioner asserts that, contrary to the Director's assertion that the Derivative's convictions represent a disregard for the laws of the United States and the safety and well-being of those in his community, he has demonstrated complete rehabilitation and his life lacks criminality.

Upon *de novo* review, the Director's decision does not reflect consideration of all the positive and mitigating factors in making the discretionary determination, particularly that of the Derivative's rehabilitation and reform since his last conviction in 2008. The Director was correct to negatively weigh the Derivative's significant criminal history, spanning from 2002 to 2008, including three criminal convictions for drinking and driving. *See Matter of Siniauskas*, 27 I&N Dec. 207, 208 (BIA 2018) (citations omitted) (holding that in determination of whether nonimmigrant is danger to community in bond proceedings, driving under influence is significant adverse consideration); *Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (A.G., BIA 2019) (discussing "reckless and dangerous nature of the crime of DUI"). However, when considering the Derivative's criminal record in the exercise of discretion, multiple factors including the "nature, recency, and seriousness" of the crimes must be considered. *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978). Here, the Director only discussed the seriousness of the Derivative's criminal history and did not discuss the recency or nature of the criminal offenses, even though the record demonstrated that all of his criminal convictions occurred over 15 years ago. The Director also did not consider that the Derivative provided significant evidence showing he has remained sober for over 12 years. Additionally, the Petitioner now submits new evidence in the form of eight letters speaking to the Derivative's continued sobriety.

Accordingly, since the aforementioned positive and mitigating equities are relevant to whether the Derivative warrants adjustment of status as a matter of discretion, and the Director's decision does not reflect full consideration of those equities, a remand is necessary. *See Chen v. Gonzales*, 417 F.3d 268, 272 (2d Cir. 2005) (finding that an agency's failure to consider "relevant evidence" may require remand). Further, the record shows that the Petitioner has provided new evidence that is relevant to the determination of whether the Derivative has been rehabilitated from his alcoholism such that he no longer poses a threat to public safety, the wellbeing of others, or a risk to property, as the Director alleged. As such, we will also remand the matter to the Director to consider the new evidence submitted on appeal in the first instance, and reconsider whether the Derivative has established eligibility for the requested benefit by a preponderance of the evidence.

ORDER: The matter is remanded to the Director for further proceedings consistent with the foregoing analysis and for the entry of new decision.