



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

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

In Re: 29463840

Date: DEC. 07, 2023

Appeal of Nebraska Service Center Decision

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

The Applicant seeks to become a lawful permanent resident (LPR) 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 Nebraska 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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

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”).

The Applicant was granted U nonimmigrant status in April 2018, until April 2022. She filed the instant U adjustment application in September 2021. The record before the Director reflected that the Applicant was arrested in [] 2022 for murder. The Director acknowledged that the Applicant provided documentation from the [] County, California, Sheriff’s Office which indicated that

her interaction with law enforcement was considered a “detention only” and not an arrest. The Applicant also submitted a letter from the Office of the District Attorney, [REDACTED] County, which states that the [REDACTED] California, Police Department referred the report for consideration of criminal charges and a member of the District Attorney's office reviewed the report, but no charges were filed against the Applicant as of August 2022. The Director acknowledged the Applicant's explanation that she was at a friend's house, and she heard a gunshot while she was there; however, the Director concluded that the Applicant had not provided the related arrest report, which had been requested in a request for evidence (RFE) and would have provided additional details of the incident. As such, the Director determined that the Applicant had not established that she warranted a favorable exercise of discretion.

On appeal, the Applicant submits a brief and additional evidence. Included in the new evidence is a notification from the [REDACTED] Police Department, and a letter from the Office of the District Attorney in [REDACTED] County. The notification from the [REDACTED] Police Department issued in February 2023, indicates that they are unable to provide the arrest report requested by the Applicant as the case is active in court. The letter from the Office of the District Attorney, written in February 2023, states that the arrest report is “exempt from disclosure as part of [their] investigative file under Government Code section 7923.600. Furthermore, the report is part of an open investigation. Therefore, [they] will not provide a copy of the above-mentioned report.”

As the Applicant has submitted new evidence, attesting to the unavailability of the arrest report requested by the Director, we remand the matter for the new evidence to be considered in the first instance, and determine whether the Applicant has established that she warrants a favorable exercise of discretion based on the evidence in the record.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.