U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28358512

Date: NOV. 6, 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 their "U" nonimmigrant status. *See* Immigration and Nationality Act (the Act) section 245(m), 8 U.S.C. § 1255(m). The U classification affords nonimmigrant status to crime victims, who assist authorities investigating or prosecuting the criminal activity, and their qualifying family members. The U nonimmigrant may later apply for lawful permanent residency.

The Director of the Vermont Service Center denied the application, concluding that the Applicant had not shown ongoing assistance to law enforcement, the vaccination record was incomplete, and the Applicant did not merit 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

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 proof to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe,* 25 I&N Dec. 369, 375-76 (AAO 2010). This burden includes establishing that discretion should be exercised in an applicant's favor; 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, an 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 entered the United States without inspection, admission, or parole in 2003. In December 2013, the Applicant was the victim of a felonious assault. The Applicant cooperated with law enforcement authorities and filed a Form I-918, Petition for U Nonimmigrant Status (U petition) on this basis in March 2014. The Director approved the Applicant's U petition in May 2017, granting U nonimmigrant status from May 2017 to May 2021. The Applicant subsequently filed an adjustment of status application, which the Director denied.

On appeal, the Applicant provides a medical examination with an updated vaccination record. He also provides an affidavit that he prepared where he indicates that law enforcement made no additional requests for assistance after the approval of the U petition. He argues that these documents are sufficient to demonstrate continued assistance to law enforcement and meet the medical examination requirement. The Applicant further argues that he merits a favorable exercise of discretion and should be granted an adjustment of status. Regarding the Director's discretionary finding, the Applicant contends that the Director conflated the holdings of different cases in citing to *Matter of Siniauskas*, 27 I & N Dec. 207 (BIA 2018). Because that case dealt with whether an applicant could receive an immigration bond, driving under the influence was evaluated in *Matter of Siniauskas* with respect to an applicant's danger to the community. Therefore, the Applicant argues that categorically applying that decision to a discretionary context was error. He also indicates that the Director described the Boards holding by using language that does not appear in *Matter of Siniauskas*. Turning to his positive factors, the Applicant highlights that he is a business owner who supports his family and has earned the respect of his community; he contends that he has demonstrated more positive than adverse factors and should be allowed to adjust status.

A. The Director's Reliance on *Matter of Siniauskas* Was Not Error

The Applicant argues that the Director improperly extended the Board's holding in *Matter of Siniauskas* to all discretionary decisions. We are cognizant that *Matter of Siniauskas* only directly addressed the impact of DUI convictions on the evaluation of dangerousness to the community in bond proceedings. However, the dangerousness and impact of DUIs as noted in the bond context in *Matter of Siniauskas* is equally relevant to a discretionary decision for adjustment of status. In determining whether to grant adjustment of status as a matter of discretion, we evaluate the totality of the circumstances. As noted above, the USCIS policy manual directs officers to evaluate an applicant's moral character, including the nature, seriousness, and recent occurrence of criminal violations. *See also Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978) (noting that an applicant's criminal history is evaluated for its "nature, recency, and seriousness"). The seriousness of DUI convictions has been noted in a variety of contexts. *See generally Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (A.G.

2019) (discussing the "reckless and dangerous nature of the crime of DUI" and finding multiple DUI convictions strong evidence of lack of good moral character for cancellation of removal); *Acevedo-Mendez v. Wilkinson*, 843 Fed. Appx. 853, 855 (9th Cir. 2017) (upholding the Board's analysis that DUI is an "extremely dangerous crime by its nature" in finding applicant barred from grant of asylum after felony DUI conviction). Therefore, the Director's treatment of DUI as a significant adverse factor in his discretionary determination was in accordance with caselaw spanning a variety of immigration benefits and requests for relief.

B. The Applicant Has Not Demonstrated that Adjustment of Status is Warranted as a Matter of Discretion

The record contains various positive factors in the Applicant's history that were presented to the Director. The Applicant indicated that he was gainfully employed and owned and operated a construction business. The Applicant provided proof of corporate registration and bank statements showing the active status of the business. He also noted that he provided support for his minor child as well as his stepdaughter, who had special needs. Letters of support were provided from various friends and family members highlighting the Applicant's work ethic and commitment to his family.

Among the negative factors in the Applicant's history are his violation of immigration laws by entering without inspection and working without authorization. In addition, he has committed various driving-related criminal offenses. In [redacted] 2007, the Applicant was arrested for driving without a valid license and adjudication was withheld. In [redacted] 2007, the Applicant was arrested for criminal mischief, DUI causing property damage, and no valid driver's license. The police reports of the incident indicate that the Applicant became involved in a verbal dispute and drove his vehicle into a home, causing damage to a garage door and fence. The Applicant's blood alcohol level was measured at .147 and .157. The Applicant was ultimately found guilty and sentenced to 12 months probation. The probation began in [redacted] 2008 and ended successfully in [redacted] 2009; the terms of this probation have not been provided.

The Applicant was arrested again in [redacted] 2008; he was charged with another DUI and was also arrested on a bench warrant for the prior DUI. In the 2008 incident, the police report notes that the Applicant drifted while driving, almost struck a concrete median, and displayed other signs of judgment issues and intoxication. Open containers of alcohol were found in the vehicle. The reporting officer noted that the vehicle did not immediately stop, and that the Applicant switched places with a passenger when stopped.

The Applicant was again arrested for DUI in [redacted] 2019, while in U status, and adjudicated guilty. He was required to attend DUI school, serve a vehicle impound, and remain on 12 months of probation. This probation was terminated in [redacted] 2020. The police report regarding the 2019 arrest notes that the Applicant was traveling 30 miles per hour above the posted speed limit and had a blood alcohol level measured at .147 and .150.

As noted above, the Applicant has been arrested for DUI on three occasions and has been convicted at least twice.[1] On appeal, the Applicant accepts responsibility for the DUI arrests and seeks to contextualize his alcohol issues as consistent with the experiences of many immigrants. He also notes that the incidents did not result in injuries, and the one incident causing property damage caused only limited damage.

We acknowledge the studies provided by the Applicant showing that alcoholism use is directly linked to immigration stress. However, the issue raised by this case is not simply the use or abuse of alcohol, it is the decision to place life and safety at risk by driving while impaired. Although as noted by the Applicant that injury, death, or additional property damage did not result from these incidents, this does not lessen the seriousness of the underlying conduct or the dangerousness of the decision to drive a vehicle while impaired. The police reports surrounding these incidents highlight the level of dangerousness. In the first incident, the Applicant drove his vehicle into a home. While it is true that he damaged only the garage door and a fence, the dangerousness of driving a vehicle into a residence is readily apparent.[2] In later incidents, the Applicant nearly struck a concrete barrier and was exceeding the speed limit by 30 miles per hour. In the two incidents where the record reflects a blood alcohol level, the Applicant was recorded at nearly double the legal limit.

Turning to rehabilitation, 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). The Applicant notes that he has worked to learn from his mistakes and has successfully completed rehabilitation programs to address alcohol issues. He also argues that a significant amount of time has passed since his arrests, which demonstrates his continued rehabilitation. However, the Applicant was on probation for his most recent DUI until 2020, after being granted U status. In this incident, he reoffended and was apprehended driving impaired for the third time, even after a previous year-long probationary period and related sentencing. As explained above, driving under the influence of alcohol 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. The Applicant has shown a repeated pattern of driving while impaired. Although we have considered the Applicant's positive and mitigating equities, these are outweighed by the adverse factors in the record.[3]

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[1] The Applicant notes that he has only two convictions for DUI after three arrests. For clarity, we note that the probation termination order for the 2007 DUI references that it ran concurrent with another case – the citation number is the same as on the 2008 DUI arrest report. It appears that the court disposed of these cases simultaneously. We also note that when filing the adjustment application, the Applicant indicated that the arrest in [redacted] 2008 was not a separate DUI but was related to the 2007 DUI. While it does appear that the Applicant was also arrested on an outstanding bench warrant for the 2007 case, the provided case reports indicate that the 2008 arrest also involved a separate incident of impaired driving.

[2] When filing the adjustment application, the Applicant noted that the property damage from the 2007 DUI was unintentional, and he hit a garage door while trying to leave. However, the police report is inconsistent with this account, as it notes that, after the argument, the Applicant drove *into* the garage door, and then caused additional damage to a fence when backing away from the door.

[3] On appeal, the Applicant argues that the Director's decision was "paradoxical" because it acknowledged his family ties as a positive factor but found that adjustment of status to ensure family unity was not warranted. The Director correctly restated the legal basis for adjustment of status, which contemplates family unity as one factor to be considered. However, the existence of family ties does not mandate a finding that adjustment is warranted; rather, this decision remains a discretionary determination made after evaluation of all positive and negative factors. The Director correctly acknowledged the Applicant's family ties as a positive or mitigating factor before ultimately determining that adjustment was not warranted in the totality of the circumstances.

III. CONCLUSION

The Director did not commit legal error when considering DUIs to be a significant adverse factor in discretionary adjustment of status determinations. The Applicant has demonstrated various positive equities in support of his adjustment of status application; however, the record demonstrates adverse factors including immigration violations, multiple DUI arrests and convictions, and insufficient rehabilitation. These adverse factors outweigh the positive equities. The Applicant has not established that adjustment of status is merited as a matter of discretion.

Because this discretionary determination is dispositive of the Applicant's claim, we need not reach, and therefore reserve, the sufficiency of the Applicant's updated vaccination record and whether he has demonstrated ongoing assistance to law enforcement. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

ORDER: The appeal is dismissed.