U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28895749

Date: NOVEMBER 8, 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 (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on her "U" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Applicant submits a brief and additional evidence.

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.

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, 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

In 2014, the Applicant filed a Form I-918, Petition for U Nonimmigrant Status, which USCIS approved, according her U-1 nonimmigrant status from May 2017 to May 2021. In December 2020, she filed the instant U adjustment application.

The Director denied the Applicant's U adjustment application. The Director acknowledged the positive and mitigating equities present in the Applicant's case, including her lengthy residence in the United States since the age of 16; her family ties, including her two U.S. citizen children; employment history and payment of taxes; and her victimization and assistance to law enforcement. However, the Director concluded that these positive and mitigating equities were outweighed by the adverse factors of her criminal history and that, accordingly, the Applicant had not submitted sufficient evidence to establish that her continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that she warranted a favorable exercise of discretion to adjust her status to that of an LPR.

The Applicant's criminal history includes the following: (1) a [redacted] 2019 conviction for driving while impaired (DWI), for which she received a 30-day suspended sentence, two years of probation, and was ordered to attend a DWI clinic; (2) a [redacted] 2020 arrest for DWI (dismissed in March 2022); (3) a [redacted] 2020 arrest for DWI, resulting in a [redacted] 2022 conviction for second DWI with two or more aggravating factors – she was sentenced to six years of probation and ordered to undergo a DWI assessment; and (4) an [redacted] 2023 conviction for driving after cancellation of a license and giving false identification to a peace officer which resulted in a fine.

On appeal, the Applicant acknowledges the mistakes she has made and contends that she is working to rectify those mistakes. She also submits an administrative probation notice indicating that she is no longer required to do regular check-ins with the probation office or random lab testing as well as a letter indicating that she completed a DWI education program.

Upon de novo review, the evidence and arguments submitted on appeal, while relevant, are not sufficient to overcome the discretionary denial of the Applicant's U adjustment application. 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. 581, 584-85 (BIA 1978). Here, the Applicant has multiple recent arrests and convictions involving DWI, a serious adverse factor. DWIs pose a risk to public safety that is not inherent in other types of offenses. See Matter of Siniauskas, 27 I&N Dec. 207, 208 (BIA 2018) (citations omitted) (holding that in a determination of whether an alien is a danger to the community in bond proceedings, driving under the influence is a significant adverse consideration); Matter of Castillo-Perez, 27 I&N Dec. 664, 671 (A.G. 2019) (discussing the "reckless and dangerous nature of the crime of DUI").

Moreover, 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. at 588 (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 her 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, she enjoys 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). In this case, the Applicant has two convictions for DWI, a conviction for driving with a cancelled license as well as a third DWI arrest – all occurring during the duration of her U nonimmigrant status and some after she applied to adjust her status to that of an LPR of the United States. Further, the Applicant's conditional sentence of six years of probation will not expire until [redacted] 2028. Because the Applicant is still on probation, we are unable to examine her actions during the entire period of time for which she must comply with court-ordered mandates as well as after her completion of them.

In the end, the Applicant's criminal history, which is both recent and serious in nature, continues to outweigh the positive and mitigating equities in her case. As such, 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 such that she warrants a positive exercise of our discretion to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.