



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

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

In Re: 28408942

Date: OCT. 18, 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) based on his “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 (Director) denied the Form I-485, Application to Adjust Status (U adjustment application).

The Director of the Vermont Service Center denied the application, concluding that the record did not establish that the Applicant is eligible for adjustment of status as a matter 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 withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

## 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’s burden of proof 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(d)(11).

A favorable exercise of discretion to grant an applicant adjustment of status to that of 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) (“[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 native and citizen of Guatemala, was granted U nonimmigrant status valid from October 2016 to October 2020. He filed his U adjustment application in October 2020 and the Director denied the application based on a determination that the Applicant had not established by a preponderance of the evidence that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest and that he merits adjustment of status as a matter of discretion.

In denying the U adjustment application, the Director discussed the Applicant’s criminal history, which includes arrests that led to a traffic infraction for driving while ability impaired, a conviction for misdemeanor aggravated driving while under the influence, three convictions for disorderly conduct, and a dismissed charge for unauthorized use of a vehicle. The Director discussed the Applicant’s arrests, charges, and the related court dispositions in detail and the record does not reflect errors in the Director’s summary. The Director determined that the favorable factors in the Applicant’s case – his family ties and the support he provides his partner and her child, assistance to law enforcement, length of residency in the United States, and consistent employment - did not outweigh the negative factors of his arrests, charges, and convictions.

On appeal, the Applicant argues that the Director gave undue weight to his past arrests; relied too heavily on charges that were dismissed, sealed, or resulted in non-criminal infractions; and did not give sufficient weight to his past trauma, assistance to law enforcement after he was the victim of a violent crime which resulted in the murder of his friend, family ties, efforts at rehabilitation, and potential hardship to him and his family. As supporting evidence on appeal, the Applicant submits a new psychological evaluation which states that he meets the diagnostic criteria for post-traumatic stress disorder (PTSD). He also provides a corrected version of a prior personal statement, photographs, and general information on PTSD, trauma in asylum seekers, and human rights in Guatemala. As this evidence relates to the Applicant’s history of trauma, some of the circumstances surrounding his arrests, his efforts at rehabilitation, and his family ties, we will remand the case to the Director to assess whether it affects his eligibility for adjustment of status as a matter of discretion.

Contrary to the Applicant’s assertions on appeal, the record does not reflect that the Director improperly weighed the Applicant’s history of arrests, charges, and convictions. The Director considered the charging documents, court disposition records, and the Applicant’s own explanations and evidence about the circumstances surrounding his encounters with law enforcement. Furthermore, reliance on an arrest report in adjudicating discretionary relief—even in the absence of a criminal conviction—is permissible provided that the report is inherently reliable and its use is not fundamentally unfair. *See e.g., Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) (“[T]he admission into the record of . . . information contained in the police reports is especially appropriate in cases involving discretionary relief . . . , where all relevant factors . . . should be considered to determine whether an [applicant] warrants a favorable exercise of discretion.”). Additionally, USCIS

considers not only convictions but also conduct that reflects on whether an applicant merits adjustment of status as a matter of discretion. *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination and that it “will generally not exercise its discretion favorably in cases where the applicant has *committed* or been convicted of” certain classes of crimes) (emphasis added).

However, the Applicant correctly notes that the Director did not fully consider the nature of the crime of which he was a victim and his role in assisting law enforcement, which formed the basis for his U nonimmigrant status. As the record reflects, the Applicant and his friend were attacked by a group of people during a robbery. The perpetrators stabbed the Applicant in the back, injuring him, and killed his friend. Due to the Applicant’s cooperation with law enforcement, which included testimony before a grand jury, three of the perpetrators were convicted. Additionally, the record shows that the Applicant experienced trauma during his childhood and came to the United States alone at the age of 14 years to work and help support his family in Guatemala. He did not complete his education as a child and had no parental guidance or support here. Because the Director did not appear to consider these details and the Applicant now submits new evidence indicating that he meets the diagnostic criteria for PTSD in relation to the past trauma he experienced, we will give the Director an opportunity to take that information into account. Additionally, although the Director did not err in considering the Applicant’s full history of arrests, charges, and convictions in the discretionary determination, the denial does not show that the favorable and mitigating factors in this case were evaluated in any detail. The Director did not discuss the passage of time since the Applicant’s arrests and convictions or any of his rehabilitative efforts. Also, the Director did not consider the Applicant’s family ties with his partner and her young child, who believes the Applicant to be his father and whom the Applicant has raised since infancy, or any potential hardship to them, aside from stating that his relationship with them merits reduced weight because of his criminal history.

The Applicant has provided new material evidence on appeal that the Director has not had the opportunity to review. As such, we will remand the matter to the Director to consider this evidence in the first instance, and further determine whether the Applicant has satisfied the eligibility requirements to adjust his status to that of an LPR under section 245(m) of the Act.

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