



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

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

In Re: 28895738

Date: OCT. 26, 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 his “U-3” nonimmigrant status 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 Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment 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 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 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) (“[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 is a citizen of Mexico who entered the United States without inspection, admission, or parole in 2000. He received U-3 nonimmigrant status as the beneficiary of an approved Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, valid from December 2016 until December 2020. He filed his U adjustment application in December 2020.

The Director denied the U adjustment application based on a determination that the Applicant did not establish his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest and he merits adjustment of status as a matter of discretion. The Director determined that the Applicant’s criminal history outweighed the favorable factors in his case. Specifically, the Director noted that the Applicant was arrested in [REDACTED] 2019, while he held U nonimmigrant status, for felony vandalism related to domestic violence against his now ex-spouse, H-M-.¹ The Applicant pled guilty and was sentenced to probation, fines, and a 52-week domestic violence class, and a protective order was entered on behalf of H-M-. In [REDACTED] 2019, while the protective order was still valid and while the Applicant was in U nonimmigrant status, the Applicant was arrested for assault with a deadly weapon, false imprisonment, assault likely to produce great bodily injury, and felony child abuse in relation to an incident involving H-M-. The Applicant pled guilty to assault likely to produce great bodily injury, a felony under California Penal Code section 245(a)(4). He was sentenced to nine days in jail, three years of probation, and fines, and was again ordered to stay away from H-M-. The Director stated that despite their requests, the Applicant had not submitted the police reports related to his arrests and his statement did not sufficiently explain the circumstances surrounding them. Additionally, the Director noted that the record did not establish whether the Applicant poses a safety risk to his daughter, as he was charged with felony child abuse in [REDACTED] 2019 and it was unclear whether she was included in the protective order issued in relation to that arrest.

With regard to favorable factors, the Director acknowledged that the Applicant has lived in the United States since he was six years old and has a history of employment and paying taxes. The Director noted the supporting letters the Applicant had submitted from friends and family. Also, the Director recognized the Applicant’s family ties, particularly with his current spouse and his daughter, but pointed out that that H-M- has legal custody of his daughter and although he contributes financially, there is no formal child support order in place.

On appeal, the Applicant submits new evidence relating to his claim 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. He provides a letter from H-M- outlining her agreement with the Applicant for child support and visitation; a Request for Order of Child Custody and Visitation the Applicant filed to seek joint legal custody and more visitation, with a court hearing scheduled for June 2023; a new personal statement; a statement from his spouse; a psychological assessment issued in April 2023; family photographs; court records and police reports

¹ We use initials to protect privacy.

relating to his arrests and convictions; a copy of a Criminal Protective Order – Domestic Violence issued in [] 2021 and valid for three years, listing H-M- as the protected person; tax, employment, and financial documents; and records relating to his stepdaughter and her diagnosis of Down syndrome.

The Applicant has provided new material, relevant evidence on appeal that the Director has not had the opportunity to review. In particular, the Applicant submits police reports, court records, and a protective order that provide more information about his criminal history, which formed the primary basis for the Director's decision to deny the U adjustment application. The letters and psychological assessment also provide additional details about the Applicant's character and steps toward rehabilitation. Additionally, the Applicant submits information about his ties with H-M- and his daughter, his role in his daughter's life including visitation and contributions to her financial needs, and whether he poses a risk to his daughter's safety. The Applicant also provides information about his family ties with his spouse and stepdaughter, including information that he supports them financially and plans to adopt his stepdaughter, and her needs in relation to her diagnosis of Down syndrome. As the Applicant notes on appeal, the Director did not consider the Applicant's family ties with, and potential hardship to, his spouse and stepdaughter, and should do so on remand. As the evidence the Applicant submits on appeal relates directly to the Director's grounds for denial of the U adjustment application, we will remand the matter to the Director to consider this evidence in the first instance. Upon consideration of all the relevant evidence in the record, the Director will 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.