U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28652504

Date: OCTOBER 30, 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. USCIS may adjust the status of a U nonimmigrant to that of an LPR if, among other eligibility requirements, she has been physically present in the United States for a continuous period of three years since the date of her admission as a U nonimmigrant. Section 245(m)(1)(A) of the Act. To demonstrate continuous physical presence, a U adjustment applicant must provide, in pertinent part, a photocopy of all pages of all passports valid since the date of admission as a U nonimmigrant or, in the alternative, an equivalent travel document or a valid explanation of why she does not have a passport. 8 C.F.R. § 245.24(d)(5).

In accordance with section 232(b) of the Act, and as implemented by regulation, all applicants for adjustment of status are "required to have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with" applicable health-related grounds of inadmissibility "shall be incorporated into the record." 8 C.F.R. § 245.5; see also section 212(a)(1) of the Act (articulating the health-related inadmissibility grounds).

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").

The applicant bears the burden of establishing their eligibility, section 291 of the Act, 8 U.S.C. § 1361, and must do so by a preponderance of the evidence. Matter of Chawathe, 25 I&N Dec. at 375. 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).

II. ANALYSIS

The Applicant filed a Form I-918, Petition for U Nonimmigrant Status, in 2013, which USCIS approved, according her U-1 nonimmigrant status from November 2016 to December 2020. In December 2020, she filed the instant U adjustment application. In August 2022, the Director issued a request for evidence (RFE) seeking additional documentation regarding her 2013 arrest for criminal possession of a forged instrument and driving without a license – including the arrest report, criminal complaint, conviction documents, and a statement describing the circumstances that led to her arrest. Additionally, the Director requested copies of all pages of her passport and an updated Form I-693, Report of Medical Examination and Vaccination Record (Form I-693), indicating compliance with the Centers for Disease Control and Prevention (CDC) policy on Hepatitis B vaccinations. In November 2022, the Applicant submitted a certificate of disposition regarding her 2016 arrest, additional pages of her passport, and a new Form I-693.

The Director denied the Applicant's U adjustment application as a matter of discretion, highlighting that the Applicant did not submit the arrest record or similar documentation that would provide necessary information regarding the circumstances of her 2016 arrest. As a result, the Director concluded that the appropriate weight of this adverse factor could not be determined. The Director also noted that the Applicant did not submit a Form I-693 reflecting compliance with the CDC policy on Hepatitis B vaccinations or copies of all pages of her passport.[1]

On appeal, the Applicant submits a new Form I-693 reflecting compliance with the CDC policy on Hepatitis B vaccinations. She also argues that she provided a copy of the Certificate of Disposition for her 2016 arrest which indicates that all charges were dropped except for a traffic violation, the

[1] We note here that the while Applicant did not submit copies of all pages of her passport in response to the RFE, she did submit copies of the missing passport pages, therefore the record viewed in its entirety reflects that she has complied with this requirement.

unlicensed operator offense, for which she paid a fine. She further contends that even assuming that she was convicted of criminal possession of a forged instrument, the maximum penalty is less than a year of jail time, and this single infraction does not outweigh the remaining 20 years she has been in the United States without incident or the other favorable factors in her case.

Upon de novo review, we adopt and affirm the Director's decision with the comments below. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994); see also Giday v. INS, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); Chen v. INS, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case.").

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). We acknowledge that evidence in the record affirms that the Applicant was ultimately not convicted on the criminal possession of a forged instrument charge; however, evidence in the record does not show the reason why the charge was dismissed. Although we do not give substantial weight to arrests absent convictions or other corroborating evidence of the allegations, we may properly consider them in our exercise of discretion. See Matter of Teixeira, 21 I&N Dec. 316, 321 (BIA 1996) (citing Matter of Grijalva, 19 I&N Dec. 713 (BIA 1988) and Matter of Thomas, 21 I&N Dec. 20 (BIA 1995) (finding that we may look to police records and arrests in making a determination as to whether discretion should be exercised)); Matter of Arreguin, 21 I&N Dec. 38, 42 (BIA 1995) (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports). Further, the fact that the Applicant was not convicted of the underlying charges, or that the charges were ultimately not sustained by a criminal court, does not equate with a finding that the underlying conduct or behavior leading to those charges did not occur. See 8 C.F.R. § 245.24(d)(11) (providing that USCIS "may take into account all factors . . . in making its discretionary determination on the application"). As noted by the Director, in the absence of additional information or documentation, such as the complete arrest report, which would allow us to properly and fully consider the basis for and specific facts surrounding the Applicant's arrest which occurred shortly before she obtained U nonimmigrant status, we are unable to assess the extent and seriousness of her criminal conduct.

We acknowledge and consider the Applicant's favorable and mitigating equities as noted by the Director. However, the Applicant's arguments and evidence submitted on appeal, while relevant, are not sufficient to overcome the discretionary denial of her U adjustment application. Accordingly, the Applicant has not established by a preponderance of the evidence that her adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, she has not demonstrated that she is eligible to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.