



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

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

In Re: 28471837

Date: OCT. 30, 2023

Motion on Administrative Appeals Office 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 derivative “U” nonimmigrant status. The Director of the Nebraska Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), finding that the Applicant’s adverse factors outweighed the positive and mitigating equities in her case and accordingly, did not warrant adjustment of status to that of an LPR as a matter of discretion. We dismissed the Applicant’s appeal. The matter is now before us on a motion to reopen. Upon review, we will dismiss the motion.

**I. LAW**

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The burden of proof is on the applicant to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

**II. ANALYSIS**

The Applicant, a native and citizen of Mexico, was granted U-3 nonimmigrant status as the child of a victim of qualifying criminal activity from  2017 to  2021, and timely filed her U adjustment application in April 2021. The Director determined that the Applicant’s criminal record, which included controlled substance and domestic violence-related charges she accrued while in U nonimmigrant status, weighed heavily against a favorable exercise of discretion. Accordingly, the Director denied the application, concluding that the Applicant’s positive and mitigating equities did not outweigh the adverse factors in her case.

In our prior decision on appeal, incorporated here by reference, we acknowledged the Applicant’s positive and mitigating equities, including her family ties to the United States, her lengthy residence in the country since childhood, stable employment, and recent sobriety. Additionally, we acknowledged letters from relatives, teachers, coworkers and friends attesting to her good moral character and close relationship with her LPR mother and U.S. citizen brother. Nevertheless, we

concluded that the positive and mitigating equities present in the Applicant's case were outweighed by the nature, recency and seriousness of her criminal history, which included convictions for controlled substance violations and driving under the influence (DUI). The record reflects that the Applicant was cited in [ ] 2018 for possession of a controlled substance. She pled guilty, completed a juvenile diversion program, and the charge was later dismissed. She was cited for driving too closely and a violation of a temporary driver's permit in [ ] 2018. Both of the charges were dismissed. She was cited in [ ] 2018 and [ ] 2019 for unlawful possession of alcohol-under 21 years of age. She paid a fine and the cases were closed. The Applicant was arrested in [ ] 2019 for domestic battery and possession of a controlled substance. She pled guilty to unlawful contact and placed on deferred adjudication and probation. The charge for possession of a controlled substance was dismissed. She was arrested in [ ] 2020 for possession of a controlled substance and possession of drug paraphernalia. She pled guilty and received 12 months' probation. The Applicant was arrested in [ ] 2021 for minor under the influence. However, the charge was later dismissed. She was arrested in [ ] 2021 for domestic battery. She was cited for domestic battery, and the charge was later dismissed. Finally, the Applicant was cited in [ ] 2021 for providing false information to a law enforcement officer, unlawful possession of alcohol-under 21 years of age, possession of drug paraphernalia, public indecency, contributing to the delinquency of a minor, and possession of a controlled substance. She pled guilty to public indecency, providing false information to a law enforcement officer, and unlawful possession of alcohol-under 21 years of age. She was sentenced to a short term of incarceration and 24 months' probation.

Regarding the Applicant's criminal history, we emphasized the nature, recency, and seriousness of her criminal history, which included battery, drug and alcohol-related offenses. We noted that all of the Applicant's citations and arrests occurred while she held U nonimmigrant status and two arrests occurred after she submitted her U adjustment application to reside permanently in the United States as an LPR. Additionally, we noted that the Applicant's arrests in [ ] 2019 and [ ] 2021 for domestic battery involved the type of behavior that U nonimmigrant status seeks to protect against. We further noted the Applicant's own admission that she struck her former partner and smacked her stepfather in the face causing one of his teeth to come out as evidence of her problematic behavior and serious risk to the personal and public safety of others. Lastly, we highlighted the Applicant's arrests for possession of a controlled substance and USCIS' reluctance to grant a favorable exercise of discretion when an applicant has committed or been convicted of multiple drug-related crimes.

On motion, the Applicant contends that, "at the time she filed her appeal, she had not yet revealed to her attorney, or to USCIS or the AAO, the extent of the domestic abuse she was experiencing when she engaged in the majority of her criminal activity." In support of her contention, she submits an updated personal statement detailing the abuse she suffered during her relationship with J-J-C-. She claims that J-J-C- "hurt [her] mentally, physically and emotionally and never cared to change for himself or for [her] and [their] relationship ruined [her] life." The Applicant also submits a letter from the [ ] recounting an incident in which J-J-C- followed her to a private transitional housing unit and caused a disturbance. Additionally, she submits further evidence of her sustained drug and alcohol sobriety in 2022 from the [ ] County Probation, self-labeled photographs of her physical injuries, and various articles regarding intimate partner violence and substance abuse. She maintains that the extent of the domestic abuse she suffered is an additional mitigating factor that should be given significant weight in the analysis of her eligibility for a favorable exercise of discretion.

Upon review, however, the record reflects that we considered this evidence, as our prior decision acknowledged that the Applicant's childhood trauma, Post Traumatic Stress Disorder (PTSD) diagnosis, and the fact that her age and lack of maturity contributed to her criminal activity in the past. We additionally acknowledge and do not seek to diminish the fact that the Applicant suffered intimate partner violence at the hands of J-J-C-. However, she has not submitted new evidence sufficient to establish 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 a favorable exercise of discretion is warranted. Therefore, she has not met the requirements for a motion to reopen. Specifically, the nature, recency, and seriousness of her battery, drug and alcohol-related offenses, all while she held U nonimmigrant status, outweighs the positive and mitigating equities present in her case. Consequently, the Applicant has not demonstrated that she is eligible on motion to adjust her status to that of an LPR under section 245(m) of the Act.

**ORDER:** The motion to reopen is dismissed.