



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

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

In Re: 29160026

Date: JAN. 8, 2024

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of U Nonimmigrant

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 his derivative “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application). A subsequent motion was rejected by the Director as improperly filed and another motion was dismissed as untimely. The Director later dismissed an ensuing combined motion to reopen and reconsider on its merits. The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Administrative Appeals Office reviews 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, the matter will be remanded to the Director for the issuance of a new decision.

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 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. 369, 375 (AAO 2010). 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).

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

The Applicant, a citizen of El Salvador, last entered the United States without inspection, admission, or parole in around 2008, at or near McAllen, Texas, when he was 24 years of age. The Applicant’s spouse, who was the victim of rape, was granted U-1 Nonimmigrant status. Consequently, the Applicant was granted U-2 Nonimmigrant status from October 2013 to September 2017. Thereafter, the Applicant’s U-2 status was extended from October 2017 until July 2020. The Applicant filed the instant U adjustment application in February 2020.

The Applicant did not submit all the required evidence in his initial filing. Consequently, the Director issued a request for evidence (RFE). The Applicant responded to the RFE. After the Director reviewed the record, the application was denied in June 2022. The Director acknowledged the positive and mitigating equities present in the Applicant’s case including: his spouse’s victimization in 2010 and her death in 2018, his role as a single parent to four minor children, the trauma every member of his family endured since the qualifying criminal activity, his significant efforts at rehabilitation, his lengthy residence since entry, employment, payment of taxes, connections in the community as evidenced by letters describing his many positive attributes, and country conditions in El Salvador. However, the Director found the Applicant’s arrests troubling. In [] 2019, he was arrested for Driving While Under the Influence of Alcohol (DWI), Driving While Under the Influence of Alcohol Per Se (DWI Per Se), Attempting to Drive Vehicle while impaired by Alcohol (Impaired Driving), Failure to Control Speed to Avoid Collision, and Negligent Driving. The Applicant entered a guilty plea and a fine was levied for Failure to Drive Right of Center, Failure to Control Speed to Avoid Collision and Negligent Driving. Subsequently, the case was closed after a disposition of nolle prosequi on all charges. In [] 2021, the Applicant was arrested for Possess Controlled Substance – Not Marijuana and in [] 2021, the case was placed on the stet docket. In [] 2021, the Applicant was arrested for Driving While Under the Influence of Alcohol (DWI), Driving While Under the Influence of Alcohol Per Se (DWI Per Se), Driving While so Impaired by Alcohol Cannot Drive Safely, Attempting to Drive Vehicle While Impaired by Alcohol (Impaired Driving), and in [] 2021, this matter was placed on the stet docket.

The Director observed that the Petitioner was recently arrested while in U-Nonimmigrant status, and that the DWI arrests and the Applicant’s admitted use of cocaine, albeit a small amount, placed the Applicant and others in danger. He was therefore a risk to public safety. As for the [] 2019 arrest, the Applicant did not acknowledge the plea agreement, or submit the police report and sufficient evidence to support his explanation for the arrest. Regarding the [] 2021 arrest, the Director noted that the Applicant did not submit sufficient details of his behavior or the circumstances that led to the arrest, address his use of cocaine or other drugs, and did not provide evidence of the successful completion of the terms. The Director noted that as a Schedule II controlled substance, cocaine was highly regulated and addictive and was a threat to public safety. Concerning the [] 2021 arrest, the Director noted that the Applicant did not provide the arrest report and charging document, nor did he provide sufficient details of his behavior or the circumstances that led to the arrest. The Director further noted that the Applicant did not provide any information regarding any substance abuse

assessment he was required to attend in light of his statement that, “I have learned from my doctors and therapists. . . .” Moreover, although the Applicant was examined by a civil surgeon in July 2021, there was no indication that the Applicant disclosed his history and current use of alcohol or drugs during this examination. As a result, the Director found that the favorable and mitigating equities in the Applicant’s case did not outweigh the adverse factors and, accordingly, he did not establish that his adjustment of status was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest.¹

In February 2023, the Director dismissed the Applicant’s combined motion to reopen and reconsider. The Director explained that the Applicant’s involvement with illegal substances and dangerous driving were concerning because they were recent and occurred while in U-nonimmigrant status. Although the Director acknowledged the worsened country conditions in El Salvador, and the additional letters of support, the Director found them to be insufficient to overcome the negative factors. And while the Director acknowledged the Applicant’s rehabilitative efforts, the Director determined that compliance with court-ordered mandates was not sufficient to demonstrate rehabilitation. The Director concluded that the Applicant’s unlawful behavior while simultaneously receiving and requesting an immigration benefit was contrary to the public interest. The Director observed that the Applicant still had not submitted all the requested evidence including police reports. Moreover, the Director explained the importance of submitting police reports and how they are used in a discretionary decision. Generally, police reports bear on the issue of the Applicant’s conduct. While we do not give substantial weight to arrests absent convictions or other corroborating evidence of the allegations, we may nonetheless consider them in our exercise of discretion. *See Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (acknowledging, as discussed in *Matter of Grijalva*, 19 I&N Dec. 713 (BIA 1988) and *Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995), that consideration of the facts and circumstances outlined in a police report is appropriate in discretionary determinations). Moreover, the Director determined that all documents the Applicant submitted were not sufficient as a whole, to overcome the basis for the denial, and it is the Director who determines what weight to give each piece of evidence in establishing the Applicant’s eligibility for adjustment of status under 245(m) of the Act.

On appeal, the Applicant submits birth certificates for his children, his affidavit, family photographs, his January 2023 psychological assessment, his March 2023 Motion to Remove from Stet Docket and Schedule for a Nolle Prosequi, [REDACTED] 2023 Trial Hearing Summary Notices indicating a Nolle Prosequi verdict for the charges of Driving Vehicle While So Far Impaired by Alcohol Cannot Drive Safely, Driving Vehicle While Impaired by Alcohol, Driving Vehicle While Under the Influence of Alcohol, and Driving Vehicle While Under the Influence of Alcohol Per Se, an article on Alcohol Use Disorder from the National Institute on Alcohol Abuse and Alcoholism, letters of support, letter from the director of the Applicant’s substance abuse treatment agency, and artwork from the Applicant’s children. For the [REDACTED] 2019 incident, the Applicant submits [REDACTED] Police calls for service, booking, arrest and alcohol/drug influence reports, and Statement of Probable Cause from the District Court [REDACTED]. For the [REDACTED] 2021 incident he submits [REDACTED] Police Alcohol Influence/Field Sobriety Incident Report, State of Maryland Notification of Defendant of Result of Test for Alcohol Concentration, Officer’s Certification and Order of Suspension, District Court of Maryland for [REDACTED] Notice to Appear for Preliminary

¹ A subsequent motion was rejected by the Director as improperly filed and the resubmitted motion was dismissed as untimely. In February 2023, the Director dismissed another motion on its merits.

Inquiry, and [redacted] Police Department Tow Report and Vehicle Storage Incident Report. Finally, the Applicant submits the [redacted] 2021 [redacted] Police Incident Report.

The Applicant explains that he is the sole caregiver for his four children, and that his wife's victimization and later death from cancer greatly impacted his mental health which contributed to his criminal conduct. According to the psychological evaluation, the Applicant has been diagnosed with post-traumatic stress disorder, anxiety, and depression. It appears that the Applicant has been attending a counselling program for substance abuse treatment since May 2021, he completed the initial program and is currently voluntarily enrolled in an aftercare program. 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). But in finding that the favorable and mitigating equities did not outweigh the negative factors present in the case, the Director highlighted as a discretionary negative factor the fact that the Applicant failed to provide police reports. The Applicant has now submitted the police reports. Furthermore, the Petitioner's criminal charges have been adjudged nolle prosequi. Because these criminal issues significantly informed the Director's discretionary determination, we will remand the matter to the Director for the issuance of a new decision and reconsideration of whether the Applicant has met his burden of establishing eligibility for adjustment of status to that of an LPR under section 245(m) of the Act and that a favorable exercise of discretion is warranted.

ORDER: The decision of the Director is withdrawn. The matter is remanded to the Director for further proceedings consistent with the foregoing analysis.