



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

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

In Re: 28985088

Date: DEC. 7, 2023

Appeal of Vermont Service Center Decision

Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant

The Petitioner, who was granted lawful permanent residency based on her “U-1” nonimmigrant status, seeks immigrant classification of the Derivative, her spouse, as a qualifying family member. *See* Immigration and Nationality Act (the Act) section 245(m)(3), 8 U.S.C. § 1255(m)(3) (outlining eligibility for classification).

The Director of the Vermont Service Center (Director) denied the Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant (U immigrant petition), concluding that the record did not establish the Derivative’s eligibility. The matter is now before us on appeal. On appeal, the Petitioner submits a brief reasserting the Derivative’s eligibility.

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

Individuals who gain their lawful permanent residency through their U-1 status may seek lawful permanent residency on behalf of a qualifying family member who has never held derivative U nonimmigrant status if granting the immigrant status would avoid extreme hardship to either the U-1 principal or the qualifying family member. Section 245(m)(3) of the Act; 8 C.F.R. § 245.24(g). Even if hardship is established, ultimately, a petitioner bears the burden of proof to demonstrate that U.S. Citizenship and Immigration Services (USCIS) should exercise its discretion and adjust the status of a qualifying family member, including his or her spouse. Section 245(m)(3) of the Act; 8 C.F.R. § 245.24(a)(2), (h)(1)(v).

USCIS may consider all factors when making its discretionary decision, including acts that would otherwise render a qualifying family member inadmissible and mitigating circumstances when there are adverse factors. 8 C.F.R. § 245.24(h)(1)(v). Depending on the nature of the adverse factors, a petitioner may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. *Id.*

II. ANALYSIS

USCIS accorded the Petitioner, a citizen of Guatemala, U-1 nonimmigrant status from October 2014 to September 2018. She subsequently adjusted her status to that of a lawful permanent resident (LPR), and during the pendency of the adjustment application, the Petitioner filed a U immigrant petition on behalf of the Derivative, her spouse, who is a citizen of Mexico. Upon review of the record, the Director denied the U immigrant petition, noting that the Derivative's arrests for carrying a concealed firearm and aggravated battery were serious criminal activities, which indicated a risk of harm to public safety and the wellbeing of others. The Director also considered the Derivative's failure to provide documentation to support claims he made regarding his arrests as an additional adverse factor in his case. Additionally, the Director acknowledged the Derivative's claims of sobriety, but noted that he did not submit "probative details regarding [his] history of alcohol abuse or documentation to establish he now abstains from alcohol." lastly, the Director determined that letters of support from the Derivative's family members did not provide probative details regarding his arrests or efforts at rehabilitation.

A. Adverse Factors

The Derivative's criminal history is the primary adverse factor in his case. In [] 1991, the Derivative was arrested in [], Florida for public intoxication in violation of section 856.11 of the Florida Statutes Annotated (Fl. Sta. Ann.). In several statements, the Derivative explained that he and a few friends were walking home from a night of drinking. He claims that he was not used to drinking so his alcohol tolerance was very low. Someone called the police and the Derivative was arrested for public intoxication. The Petitioner submitted a court disposition record indicating the charge was *nolle prossed* in [] 1999 after the Derivative completed a pretrial diversion program.

In [] 2001, the Derivative was arrested in [], Florida for Carrying a Concealed Firearm in violation of section 790.01(2) of the Fl. Stat. Ann. The Derivative explained that several coworkers invited him to a bar. He met a woman there and began dancing with her. According to the Petitioner, the woman later claimed that he owed her money. She threatened to call the police if he did not pay. The Derivative claimed that he refused to pay because he had not done anything wrong and believed the woman was attempting to steal his money. Eventually, the police arrived and the Derivative claims he was falsely arrested for having a firearm. The Petitioner submitted court disposition records indicating that the State Attorney filed a "No Action" in the case in [] 2001.

Finally, the Derivative was arrested in [], Florida in [] 2007 for Aggravated Battery in violation of section 784.045(1)(a)(1) of the Fl. Stat. Ann. The Derivative recounted that he had previously loaned rent money to a friend. On their way home from a bar, he asked his friend to repay the loan. An argument ensued and the Derivative's friend threatened to kill him. He hit the Derivative in the head with a bottle. The Derivative grabbed a knife to defend himself. He claimed that he did so to protect himself and never had any intention of using the knife. The Derivative submitted court disposition records indicating that an Assistant State Attorney "No Filed" the case in [] 2007.

In terms of his immigration history, the Derivative first entered the United States without inspection, admission, or parole in 1997, when he was 11 years old. He was placed into removal proceedings in [REDACTED] 2013. An Immigration Judge (IJ) ordered the Derivative removed from the United States in [REDACTED] 2013. His case was subsequently reopened after he claimed a fear of persecution if he returned to Mexico. An IJ subsequently denied the Derivative's asylum claim and he was again ordered removed from the United States in [REDACTED] 2017. The Derivative filed an appeal with the Board of Immigration Appeals (Board), which was denied in August 2017. In October 2017, the Derivative filed a Form I-246, Application for Stay of Deportation or Removal with U.S. Immigration and Customs Enforcement (ICE). After denying the application, ICE placed the Derivative on an Order of Supervision (OSUP) in November 2018.

On appeal, the Petitioner contends that the Director "focused all of [her] attention on [the Derivative's] negative factors, namely his 2007 arrest for which he was never charged or convicted." She emphasizes that the Derivative's last arrest was 16 years ago, and that "there wasn't enough evidence to convict [the Derivative] of this crime then and there is insufficient evidence to find that he doesn't deserve positive discretion now." Relatedly, the Petitioner argues that the Director failed to take into consideration or place sufficient weight on the Derivative's positive factors such as: his lengthy residence in the United States, payment of taxes, sustained sobriety, his roles as a spouse, stepfather and breadwinner, and the extreme hardship his spouse would experience if he is not allowed to remain in the country.

B. Favorable and Mitigating Factors

The Derivative has resided in the United States for more than 26 years. He is also married and the stepfather to two U.S. citizen children. He states that he is sober and has not had any contact with law enforcement since 2007. He also attends church regularly and is now focused on providing for his family. In statements submitted below, the Petitioner reiterates that she would suffer extreme hardship if the Derivative was unable to remain in the United States. She states that she would lose access to the psychological help that she has been receiving because she is a domestic violence survivor. She further states that she works part-time and would struggle to support her two U.S. citizen children without the Derivative's financial and emotional assistance. She stresses that if she had to relocate to Mexico with the Derivative, her former abusive spouse would retaliate against her. In several letters, the Derivative's family members and friends praise the emotional and financial support that the Derivative provides to his family. The Petitioner also submits evidence of the household income and expenses, including a letter from their landlord confirming that they have been tenants in good standing since June 2015.

C. Weighing of the Factors as an Exercise of Discretion

As indicated previously, the regulations specify that USCIS may consider all factors when making its discretionary decision. 8 C.F.R. § 245.24(h)(1)(v). The Petitioner bears the burden of establishing eligibility, including that the U immigrant petition should be granted as a matter of discretion. Section 245(m)(3) of the Act; 8 C.F.R. § 245.24(a)(2), (h)(1)(v). The Petitioner has not met her burden in this regard.

In this case, the record indicates that the Derivative was arrested in 2001 and 2007 for carrying a concealed firearm and aggravated battery— serious criminal activities which indicate a risk of harm to public safety and the wellbeing of others. Although we agree that the Derivative was not convicted after any of his arrests in 1999, 2002 and 2007, those arrests, and the specific circumstances underlying them, are factors USCIS considers in its discretionary determination. 8 C.F.R. § 245.24(h)(1)(v) (stating “USCIS may take into account all factors . . . in making its discretionary decision on the [U immigrant petition]”); *see also Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (A.G. 2019) (concluding that when determining whether discretionary relief is warranted, “[a]n alien’s criminal record—including its ‘nature, recency, and seriousness’—is a key factor”) (citation omitted). We acknowledge the Derivative’s statements submitted with the U immigrant petition and in response to the RFE detailing the circumstances that led to his arrests in 1999, 2001 and 2007. However, the Petitioner has not provided on appeal any documentation corroborating the Derivative’s version of the events that led to those arrests, as requested by the Director. As a result, we agree with the Director’s conclusion that we are “unable to make a proper determination on how much weight to place on each of the [arrests] as negative discretionary factors.”

Moreover, the record reflects that the Director did consider the Derivative’s positive factors. Specifically, the Director noted the Derivative’s lack of recent criminal history, six-year marriage to the Petitioner and her claimed hardship, and letters from family members praising him as a father, sibling and uncle. Nevertheless, we reiterate that the Petitioner did not submit any documentation on appeal confirming the Derivative’s claimed sobriety nor did she address the lack of probative details regarding the Derivative’s criminal history or efforts at rehabilitation in the letters from his family members— deficiencies the Director specifically highlighted in her decision. In sum, the Derivative’s positive and mitigating factors remain outweighed by the nature and seriousness of his arrests, the lack of a comprehensive picture of the circumstances leading up to them, and the lack of sufficient evidence of his sustained sobriety and efforts at rehabilitation. Accordingly, the Petitioner has not demonstrated that USCIS should exercise its discretion favorably.

III. CONCLUSION

The Petitioner has not met her burden of establishing by a preponderance of the evidence that USCIS should exercise its discretion favorably, and accordingly, the U immigrant petition remains denied.

ORDER: The appeal is dismissed.