U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: APR 0 1 2014 Office: VERMONT SERVICE CENTER [redacted]

IN RE: APPLICANT: [redacted]

APPLICATION: Application to Adjust Status (Form I-485) for an Alien in U Nonimmigrant Status Pursuant to Section 245(m)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)(1)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the Application to Register Permanent Residence or Adjust Status (Form I-485). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal shall be sustained and the application approved.

The applicant, who was granted U-1 nonimmigrant status, seeks to adjust her status under section 245(m)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m)(1).

Applicable Law

Section 245(m)(1) of the Act states:

> The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E), unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if --
>
> > (A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U); and
> >
> > (B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

The regulation at 8 C.F.R. § 245.24 provides, in pertinent part:

> (b) *Eligibility of U Nonimmigrants*. Except as described in paragraph (c) of this section, an alien may be granted adjustment of status to that of an alien lawfully admitted for permanent residence, provided the alien:
>
> > (1) Applies for such adjustment;
> >
> > (2)(i) Was lawfully admitted to the United States as either a U-1, U-2, U-3, U-4 or U-5 nonimmigrant, as defined in 8 C.F.R. § 214.1(a)(2), and
> >
> > > (ii) Continues to hold such status at the time of application; or accrued at least 4 years in U interim relief status and files a complete adjustment application within 120 days of the date of approval of the Form I-918, Petition for U Nonimmigrant Status;
> >
> > (3) Has continuous physical presence for 3 years as defined in paragraph (a)(1) of this section;

(4) Is not inadmissible under section 212(a)(3)(E) of the Act;

(5) Has not unreasonably refused to provide assistance to an official or law enforcement agency that had responsibility in an investigation or prosecution of persons in connection with the qualifying criminal activity after the alien was granted U nonimmigrant status, as determined by the Attorney General, based on affirmative evidence; and

(6) Establishes to the satisfaction of the Secretary that the alien's presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest.

(c) *Exception.* An alien is not eligible for adjustment of status under paragraph (b) of this section if the alien's U nonimmigrant status has been revoked pursuant to 8 C.F.R. § 214.14(h).

Section 245(m) of the Act makes adjustment of status a discretionary benefit. The applicant bears the burden of showing that discretion should be exercised in her favor. 8 C.F.R. § 245.24(d)(11). While U adjustment applicants are not required to demonstrate their admissibility, U.S. Citizenship and Immigration Services (USCIS) may consider all factors when making its discretionary decision on the application. *Id.* Generally, favorable factors such as family ties, hardship, and length of residence in the United States may be sufficient to merit a favorable exercise of administrative discretion. However, where adverse factors are present, it will be necessary for the applicant to offset these factors by showing sufficient mitigating factors. *Id.* This rule permits applicants to submit information regarding any mitigating factors they would like USCIS to consider when determining whether a favorable exercise of discretion is appropriate. *Id.* Depending on the nature of an applicant's adverse factors, the applicant may be required to demonstrate clearly that the denial of adjustment of status would result in exceptional and extremely unusual hardship. *Id.* Moreover, depending on the gravity of the alien's adverse factors, such a showing might still be insufficient. *Id.*; *see Matter of Jean*, 23 I&N Dec. 373, 383-384 (A.G. 2002), aff'd *Jean v. Gonzales*, 452 F.3d 392 (5th Cir. 2006); *see also Pinentel v. Mukasey*, 530 F.3d 321 (5th Cir. 2008); *Meija v. Gonzales*, 499 F.3d 991 (9th Cir. 2007). For example, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns. 8 C.F.R. § 245.24(d)(11).

Facts and Procedural History

The applicant was initially granted interim relief on September 27, 2005 based upon a request for U nonimmigrant status pending publication of the U nonimmigrant visa interim rule. On October 1, 2010, the director approved the applicant's Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition). The applicant's U-1 status was valid from September 27, 2005, when she was granted interim relief, until September 30, 2011. The applicant filed the instant Form I-485 on September 19, 2011, and the director denied the applicant's adjustment of status application because, although the applicant established that her continued presence in the United States was justified on humanitarian grounds and to ensure family unity, a favorable exercise of her discretion was not warranted because the adverse factors

in the applicant's case outweighed the positive factors. The applicant timely appealed the denial of her Form I-485.

On appeal, counsel submits additional evidence and asserts that the applicant merits a favorable exercise of discretion because she was the victim of a violent crime and because of her strong family ties to the United States. On August 27, 2013, the AAO issued a Request for Evidence (RFE) of the applicant's successful completion of probation as well as a statement from the applicant explaining the circumstances of her conviction for driving under the influence (DUI) and her rehabilitation. The applicant responded with additional evidence.

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On December 31, 2008, the applicant was arrested for two counts of felony aggravated battery against a household member, criminal damage to property, driving under the influence, and failure to give information and render aid. On March 23, 2010, the applicant pleaded guilty/no contest to driving while under the influence of liquor, and was sentenced to 364 days of supervised probation and ordered to attend alcohol/substance abuse and anger/conflict counseling. The applicant's supervised probation was terminated on March 24, 2011. On or about June 6, 2011, the applicant was charged with battery, assault, cruelty to children, and failure to comply with conditions of release. On January 4, 2012, the applicant was found guilty of assault and failure to comply with conditions of release.

On appeal, counsel claims that the applicant has demonstrated that she is a good mother and she has acknowledged her errors. Counsel further notes that the applicant is "working through her issues and is aware of the need to change," and has ties to the community. Counsel asserts that the positive factors in this case outweigh the negative factors.

In response to the AAO's RFE, the applicant submitted a letter from her probation officer, dated October 18, 2013, who states that the applicant participated in the Violence Repeat Offender Court Program from April 8, 2012 until April 8, 2013, and that she completed both individual and group domestic violence counseling while employed on a full-time basis. The applicant's probation officer asserted that the applicant "showed perseverance and a strong work ethic and enabled her to complete the rigorous program without any sanctions."

In her affidavits, the applicant states that she regrets the decision she made the night of her DUI arrest, she no longer drinks alcohol, that through counseling she has learned to deal with her problems in a more positive way, and acknowledges that she has made many bad decisions in her life.

A letter from , attests to the applicant's participation in its program since February 2010 as well as her "resilience, perseverance, dedication and drive . . . to

secure a safe environment for her and her child."[1] A letter from of the attests to the applicant and her son's[2] participation in individual and family therapy from 2005 until 2006 and then again in 2012 "when the family resumed counseling services." states that the applicant is a "very caring and dedicated mother" and that the applicant's son, who received therapy for emotional and psychiatric issues that he suffered from witnessing and being the victim of domestic violence, has a heightened risk for additional psychological problems should he be separated from his mother or relocated to Mexico to live with his mother where the appropriate services for addressing any debilitating emotional or psychological problems would be difficult to find in Mexico.

A letter from the applicant's son's pediatrician, , states that the applicant's son required surgery in infancy for urological abnormalities and that he requires intermittent follow-up with a urologist. attests to the applicant's "excellent job" in ensuring that her son receives all necessary medical care, including visits to specialists and routine "well child" care.

The applicant has also submitted letters of support from community members highlighting her contributions to and participation in various positive activities including an organic food program, English as a second language classes, and church programs. Many of her family members have written multiple letters on her behalf as well. She is employed full-time.

The overall evidence establishes that the applicant's adjustment to lawful permanent residency is warranted as a matter of discretion. The favorable and mitigating factors in the present case are the applicant's family and community ties in the United States, her son's continuing need for follow-up medical care, and her rehabilitation and completion of probation. The unfavorable factors are the applicant's convictions, her entry into the United States without inspection and her unlawful presence in the United States. When viewed in their totality, the positive factors in the present case outweigh the adverse factors. Accordingly, the AAO withdraws the director's decision and sustains the appeal, as the applicant merits a favorable exercise of discretion.

Conclusion

In these proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b),(d). Here, that burden has been met as to the applicant's eligibility to adjust status under section 245(m)(1) of the Act.

ORDER: The appeal is sustained and the application is approved.

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[1] On its website, describes itself as "a treatment program devoted to the recovery and healing of individuals, families, and communities suffering from emotional and psychological distress." *See*

[2] The record indicates that the applicant's son is a U.S. citizen by birth, having been born on August 21, 2001 in the State of New Mexico.