The Applicant seeks to become a lawful permanent resident based on his U derivative nonimmigrant status. See Immigration and Nationality Act (the Act) section 245(m), 8 U.S.C. § 1255(m). The U classification affords nonimmigrant status to victims of qualifying crimes, who assist authorities investigating or prosecuting the criminal activity, and their derivative family members. The U nonimmigrant and derivative family members may later apply for lawful permanent residency.

The Director of the Vermont Service Center approved the Applicant’s U-3 nonimmigrant status in October 2012, based on his mother having been a victim of domestic abuse. The Director subsequently denied the Applicant’s Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), as a matter of discretion because the gravity of offenses in his juvenile record outweighed the positive factors in his case.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Applicant claims that he warrants a favorable exercise of discretion and his adjustment of status should be granted.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

A U nonimmigrant may adjust status to that of a lawful permanent resident at the discretion of U.S. Citizenship and Immigration Services (USCIS) if the U adjustment applicant’s 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 showing that discretion should be exercised in his favor. 8 C.F.R. § 245.24(d)(11). USCIS may consider all factors when making its discretionary decision on the application. *Id.* Generally, favorable factors such as family unity, length of residence in the United States, employment, community standing and good moral character may be sufficient to merit a favorable exercise of administrative discretion. 7 USCIS Policy Manual A.9(B)(2), https://www.uscis.gov/policymanual. However, where adverse factors are present, the applicant should submit evidence of mitigating equities. 8 C.F.R. § 245.24(d)(11). *See Adjustment of Status to Lawful Permanent Resident for Aliens in T or U*
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Nonimmigrant Status, 73 Fed. Reg. 75540, 75549 (December 12, 2008) (explaining that “where adverse factors are present, it will be necessary for the applicant to offset these factors by showing sufficient mitigating factors.”). Depending on the nature of the 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. 8 C.F.R. § 245.24(d)(11).

A favorable exercise of discretion is generally not warranted 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. Id. An act of juvenile delinquency is not a criminal conviction, but it is a factor we consider when reviewing an application for a discretionary benefit such as adjustment of status. See Matter of Devison, 22 I&N Dec. 1362, 1365 (BIA 2000) (acts of juvenile delinquency are not crimes or convictions for immigration purposes); 7 Matter of Arai, 13 I&N Dec. 494, 496 (BIA 1970) (adverse factors may require a showing of outstanding equities to merit a favorable exercise of discretion to grant adjustment of status).

II. ANALYSIS

Upon a full review of the record, as supplemented on appeal, the Applicant has not overcome the Director’s ground for denial. The Applicant, now years old, is a native and citizen of Mexico who entered the United States as a young child. In of 2013 and 2014, when the Applicant was and years old, he was arrested and adjudicated delinquent for joyriding and for two counts of the sexual abuse of a child under 14. With his U adjustment application, the Applicant submitted a personal statement admitting to these acts, letters of support from friends and family, a case history summary showing the dispositions of these charges, and Utah police reports providing details about the sexual abuse of his nieces. The Applicant also submitted a juvenile court order releasing custody of the Applicant from the Division of Juvenile Justice Services back to his mother in 2015 and a letter from MSW, LCSW, a Board member of The Applicant subsequently filed his U adjustment application in December 2015. The Director determined that the gravity of the Applicant’s offenses outweighed his positive equities and he did not establish that his continued presence in the United States was justified on humanitarian grounds, to ensure family unity or is otherwise in the public interest such that a favorable exercise of discretion was warranted.

A. Favorable Factors

The record shows that the Applicant is the youngest of five or six children and resides with his mother, a lawful permanent resident of the United States. His sister is also a U.S. lawful permanent resident. He has lived in the United States for 17 years, attended school in the United States from kindergarten through senior year of high school, and in October 2016 had a 3.8 grade point average. According to the Applicant’s teacher, the Applicant is a good student who stays out of trouble.

1 The record contains conflicting information about the total number of children in the family.
In his affidavit submitted below, the Applicant recounted that he joined the Mormon Church after his release from juvenile detention and placement with a foster family of the Mormon faith. While he was in foster care, the Applicant was baptized and began attending church on a regular basis. He stated that he is active with the missionaries and would like to an opportunity to become a better person. The Applicant’s mother and sister stated that the Applicant has learned a lot from his mistakes, grown emotionally, and made many positive changes in his life. They indicated that the Applicant does not know Mexico and there would be no hope for his future if he had to return. Both the Applicant’s mother and sister requested that he be given an opportunity to remain in the United States.

Below, the Applicant also submitted a letter from the local branch president (bishop) of the Church of Jesus Christ of Latter Day Saints as well as a letter from his employer at the restaurant where he works. The bishop vouched for the Applicant’s good character and attested that the Applicant is active in the church, volunteers regularly, and is considered a youth leader. The Applicant’s employer stated that the Applicant has been employed at his restaurant since January 2016. He further stated that the Applicant was a great employee, a good person, and respectful. However, neither the church bishop nor the Applicant’s employer expressed knowledge of the Applicant’s juvenile offenses.

B. Adverse Factors

The adverse factors in this case are the Applicant’s juvenile offenses for joyriding and two counts of sexual abuse of a child under 14 following the Director’s approval of his U-3 nonimmigrant status in 2012.

The record before the Director shows that the Applicant was arrested in 2013 and was charged with joyriding (more than 24 hours) and criminal mischief when he was years old. The juvenile court adjudicated the Applicant delinquent for joyriding, which would be a third-degree felony offense under section 41-1a-1314 of the Utah Code Ann. (West 2013) had the Applicant been tried as an adult. As indicated by the Applicant’s juvenile case history summary, the court dismissed the criminal mischief charge, ordered that the Applicant be released to his mother’s custody, and placed the Applicant on probation from 2013 to 2013.

The police arrested the Applicant a second time in 2014 and he was subsequently charged with one count of sodomy upon a child under 14 years old and two counts of sexual abuse of a child under 14 years old. In 2014 the juvenile court adjudicated the Applicant delinquent for two counts of sexual abuse of a child under 14, which would constitute first-degree felony crimes had the applicant been prosecuted as an adult, and dismissed the sodomy charge. The police reports indicated that the Applicant was years old at the time of his arrest for the sexual abuse offenses, and that the victims were his two young nieces who were the daughters of two of his sisters. According to the responding police officer, the Applicant admitted to sexually abusing one of his nieces during a two-year period, and sexually abusing his other niece more than two years previously. One of his nieces was years old at the time of victimization while the Applicant
was to years old. The Applicant additionally told the police officer that when he was in the fourth grade, his brother sexually abused him. According to the case history summary submitted by the Applicant, the juvenile court ordered the Applicant detained for six months followed by six months in foster care, and required the Applicant to submit to a sex evaluation, a DNA specimen, counseling, payment of fees, and other conditions. The Applicant complied with the juvenile court and pursuant to a court order issued in 2015, the Applicant was released from the custody of the Division of Juvenile Justice Services, the juvenile court’s jurisdiction was terminated, and custody of the Applicant was returned to his mother.

In statements before the Director, the Applicant stated that he “regret[s] everything” and expressed remorse for his behavior and for hurting others. We recognize the Applicant’s commitment to his church and to his employment. We also acknowledge that the Applicant completed the terms of the juvenile court including one year of sex-specific treatment. The board member who provided the Applicant’s court ordered sex-specific treatment, stated in her letter that based on the Applicant’s completion of the treatment, he had a good chance of becoming a productive member of society. Evidence of rehabilitation is a mitigating factor; however, when the Applicant filed his U adjustment application in December 2015, he had been out of juvenile custody for only four months, and considering the gravity of the applicant’s sexual abuse offenses, the record did not demonstrate that the Applicant had fully rehabilitated. While we do not discount expertise, the letter provided mainly addressed how juvenile sexual abuse offenders differ from adult offenders. She briefly mentioned that the Applicant fit into the category of juveniles who are “horrified” when understanding the “possible victim impacts.” She stated that the Applicant has likely successfully completed treatment but she did not further provide substantive information regarding the basis of her determination.

On appeal, the Applicant submits a psychological evaluation from Ph.D. to show that he has rehabilitated. discussed the “considerable psychological trauma in [the Applicant’s] childhood and adolescence” as reported to him by the Applicant. stated that the Applicant’s trauma was caused by witnessing his father’s abuse of his mother from a young age, and being sexually abused by his brother when he was years old. He further determined that this explained, in part, the Applicant’s “acting out” in adolescence. noted that the Applicant has had a past pattern of chronic depression with disturbing nightmares, hallucinations, and suicidal ideations, which have been alleviated by the positive changes he has made in his life. While report provides context and explanation for the Applicant’s adverse behavior, the results of his evaluation do not overcome the serious negative factors of the Applicant’s repeated sexual abuse of his minor nieces nor establish that the Applicant has fully rehabilitated.

C. An Exercise of Discretion is not Warranted on Humanitarian Grounds, for Family Unity, or in the Public Interest

The record shows that the Applicant admitted to repeatedly sexually abusing his nieces for an extended period. USCIS will generally not favorably exercise discretion to grant adjustment of status for applicants who have committed or been convicted of a crime involving sexual abuse
committed upon a child. 8 C.F.R. § 245.24(d)(11). The Applicant asserts that because he committed the offenses of sexual abuse of a child when he was a juvenile, the delinquency should carry less negative weight. Acts of juvenile delinquency are not crimes or convictions for immigration purposes. Matter of Devison, 22 I&N Dec. at 1365. However, a juvenile offense may be considered in reviewing an application for a discretionary benefit, such as adjustment of status. See Wallace v. Gonzales, 463 F.3d 135 (2d Cir. 2006) (a New York youthful offender adjudication can be considered when evaluating an application for adjustment of status, although such an adjudication was not a “conviction” for deportation purposes). U adjustment applicants should submit evidence to mitigate adverse factors. 8 C.F.R. § 245.24(d)(11). In this case, the Applicant has not submitted evidence sufficient to mitigate the adversity of his repeated sexual abuse of two children for over two years.

The Applicant has not established that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. The record indicates that the Applicant has lived in the United States for a long time, has a close relationship with his mother and sister, both U.S. lawful permanent residents, and has participated in church activities in his community. The Applicant also expressed remorse for his offenses and claimed that he was abused by his father and his brother as a child. Additionally, the Applicant reasserts on appeal that he would suffer hardship if he returned to Mexico as would his mother. He previously submitted evidence of significant crime and gang violence in [redacted] to where he indicated he would return if removed to Mexico, but the Applicant did not show he would be unable to avoid any such violence to which he would be individually vulnerable through relocation to another area of Mexico. While the Applicant’s equities are relevant to family unity and humanitarian concerns, these positive factors do not outweigh the serious nature of the Applicant’s sexual abuse of children. Further, as the Director correctly determined, the serious nature of the Applicant’s conduct shows a disregard of the law that does not demonstrate that it is in the public’s interest to adjust his status.

III. CONCLUSION

The Applicant’s positive equities are outweighed by the adverse factors of the Applicant’s juvenile delinquencies and repeated sexual abuse of two children. Accordingly, the Applicant has not established that his 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 would be warranted to adjust his status to lawful permanent residency.

ORDER: The appeal is dismissed.

Cite as Matter of R-N-A-, ID# 380829 (AAO Aug. 29, 2017)