



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

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

In Re: 12484039

Date: MAR. 8, 2021

Appeal of Vermont Service Center Decision

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

The Applicant seeks to become a lawful permanent resident (LPR) based on her “U” nonimmigrant status as a victim of qualifying criminal activity under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence.

Applicants for U adjustment bear the burden of establishing eligibility pursuant to section 291 of the Act, 8 U.S.C. § 1361, and must establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions raised in this matter *de novo*. See *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

U.S. Citizenship and Immigration Services (USCIS) may in its discretion adjust the status of individuals lawfully admitted to the United States as U nonimmigrants to that of an LPR if, among other eligibility requirements, they establish that 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.

A favorable exercise of discretion to grant applicants adjustment of status to that of 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). Where adverse factors are present, the applicant should submit evidence establishing mitigating equities. See 8 C.F.R. § 245.24(d)(11) (stating 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 record reflects that the Applicant, a native and citizen of Honduras, entered the United States without being admitted, inspected, or paroled in 2006. The Applicant was granted U-1 nonimmigrant status for the period from October 2014 through September 2018 and timely filed her U adjustment application based on the U-1 status in May 2018. The Director determined that the Applicant’s adjustment application did not merit a favorable exercise of discretion, concluding that the negative factors in her case outweighed the favorable and mitigating equities; the Director referred specifically to the Applicant’s arrests in 2012 and 2015, the latter while she was in U nonimmigrant status. The Applicant has not overcome the Director’s determination on appeal.

With the application and in response to the Director’s request for evidence, the Applicant submitted a personal affidavit, documents related to her arrests, financial records, civil documents, and photographs of her family. On appeal, the Applicant supplements the record with additional documents related to her arrests, a letter on her behalf from a practicing criminal attorney, updated financial records, letters of support from friends, country conditions information for Honduras, and photographs.<sup>1</sup>

The Director identified the Applicant’s positive equities as her four U.S.-born children, financial records showing she supports her family, her purchase of a home, and that her employer describes her as a valuable worker. The Director noted that the Applicant has an outstanding removal order and gave limited weight to her explanation that she attempted to have a change of venue when she relocated.<sup>2</sup>

The Director concluded that the seriousness of the Applicant’s 2012 and 2015 charges were not mitigated by the evidence in the record and that she had not sufficiently explained why charges were dismissed. The Director noted that in 2012 the Applicant was charged with three counts of criminal mischief with evidence showing two counts were dismissed but providing no explanation for the dismissal, and that the disposition of the third count was not addressed. The Director found that a record of disposition indicates charges were “DISM” without providing further detail. The Director’s decision further noted that in 2015 the Applicant was charged with the following: criminal mischief – damage to property; two counts of unlawful possession of a weapon; simple assault; and conspiracy.<sup>3</sup> The Director noted that one charge of unlawful possession of a weapon was amended to disorderly conduct and the other possession of a weapon charge was amended to harassment. The Director indicated that records showed “no plea” was entered for each charge against the Applicant with findings dismissed, but that no reason for the dismissals was provided, and concluded that the

---

<sup>1</sup> The Applicant also submitted an updated Form I-693, Report of Medical Examination and Vaccination Record as the Director concluded that the Applicant’s prior submission was missing page 13 of the document. She has thus overcome this portion of the Director’s findings.

<sup>2</sup> The record reflects that in [redacted] 2007 an Immigration Judge ordered the Applicant removed *in absentia* from the United States.

<sup>3</sup> Reference to conspiracy charges appears to be in error as criminal records do not otherwise reflect the Applicant was charged with conspiracy.

Applicant's arrests demonstrated disregard for the safety and property of others. Although acknowledging the Applicant's assertion that she was unable to obtain any document from the police department explaining dismissals, the Director determined that she had not sufficiently explained why the charges were dismissed.

On appeal, the Applicant asserts it is abuse of discretion for the Director to base a denial on dismissed criminal charges, contends it is an unreasonable burden to require an explanation for each charge in police reports, and cites legal decisions that police reports are unreliable. The Applicant maintains that both her arrests stemmed from arguments with her current spouse<sup>4</sup> and that since the State criminal justice system dismissed all charges no further analysis is warranted. She asserts that she has already explained what happened, expressed sorrow for her behavior, and provided all the evidence available, and she refers to letters from the county prosecutor's office that they have no further records as the cases were downgraded and remanded to municipal courts. With the appeal the Applicant submits March 2020 letters from the [REDACTED] Prosecutor's Office confirming that each case was downgraded and remanded to municipal courts for disposition.

Addressing the 2012 arrest, the criminal attorney contends that she is awaiting a reply for the specific reasons the charges were dismissed, but asserts that original records were destroyed, that the court relies only on computer records which confirm the matter was dismissed, and that the judge and prosecutor assigned to the Applicant's case no longer work for this court. The record contains a court document showing that two counts of criminal mischief were dismissed in [REDACTED] 2012 without providing further detail. With the appeal the Applicant submits a handwritten note under municipal court letterhead indicating that the Applicant's file is unavailable because files are destroyed every seven years. The attorney concedes there are many reasons for dismissal but assumes the Applicant's case was dismissed because the prosecutor could not prove it. She maintains that there was only one witness who identified the defendant as committing criminal mischief, but it is not known who the witness was or if they appeared in court. We note that although the record does not identify the witness whom the police report shows notified them, the Applicant concedes the offense in her affidavits.<sup>5</sup>

In a police investigative report of the 2012 arrest, a police officer describes receiving a report of a female damaging vehicles. The report shows that the vehicles' owner, the Applicant's current spouse, told police that he was in a relationship with the Applicant but did not want his wife to know. The Applicant was charged with criminal mischief. In her affidavits submitted below, the Applicant conceded that she broke the windshield of her current husband's car out of frustration about their relationship when he asked her to be his girlfriend. She states that insecurity due to having been the victim of abuse in a prior relationship is to blame for her behavior and that she sought documents from police several times but was told they only have the disposition.

Addressing the 2015 arrest, the attorney contends that the all charges were dismissed, although allowing that records do not indicate the reason. Referring to a complaint warrant, she argues that the judge dismissed the case after putting the victim under oath. The complaint warrant, submitted on

---

<sup>4</sup> The record shows that the couple married in 2018 and had children together in 2013 and 2014.

<sup>5</sup> The attorney maintains there was no third criminal mischief charge as identified by the Director. A review of the criminal records identifies two counts of criminal mischief against the Applicant but does not appear to contain a third charge.

appeal, indicates that charges against the Applicant under codes 2C: 39-5D and 39-4D<sup>6</sup> were dismissed with a handwritten notation “state’s motion, victim *voir dire*” signed by a judge.

Regarding the 2015 arrest, a police incident report narrative describes officers being called to a home for a domestic dispute where they then took the Applicant to a hotel. It states that officers were later called back, that they then found the victim with scratches on his face, and that he reported the Applicant used a kitchen knife to cut walls, but she did not threaten him with the knife. The narrative indicates that police observed cuts on walls and the kitchen counter and that the Applicant stated she returned to the home as she feared for her children because the victim’s brother was there. The report shows the Applicant charged with simple assault, criminal mischief, and possession of a weapon. In her affidavit submitted below, the Applicant explained that she felt their relationship was unstable because her boyfriend was in contact with his ex-girlfriend, that she was still suffering from her prior relationship and felt betrayed, that they got into an argument after drinking, and that her brother-in-law called police, who took her to a hotel. The Applicant stated that she later returned to her boyfriend’s home, but that they again argued so she scratched his face. She noted that they are now married, that she is more mature and that she learned from past mistakes when she was young, abused, and a mother.

The arguments advanced on appeal are not sufficient to overcome the discretionary denial of the Applicant’s U adjustment application. We acknowledge that evidence in the record affirms that the multiple charges against the Applicant were dismissed. Although we do not give substantial weight to arrests absent convictions or other corroborating evidence of the allegations, we may properly consider them in our exercise of discretion. *See Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing to *Matter of Grijalva*, 19 I&N Dec. 713 (BIA 1988) and *Matter of Thomas*, 21 I&N Dec. 20 (BIA 1995) (finding that we may look to police records and arrests in making a determination as to whether discretion should be exercised); *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995) (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports).

The Applicant contends the charges should not be weighed since they were dismissed and that police reports are unreliable, but she does not otherwise dispute the account of events in the police reports or show that the allegations were inaccurate or unreliable. The Applicant’s affidavits offer little detail about the events that led to her arrests and provide no information about her interaction with police, prosecutors, a judge, or in court. Irrespective of the charges being dismissed, the Applicant admits to her negative behavior that resulted in her arrests, and as the Director determined, evidence in the record does not show the reason why each charge was dismissed. As such, we find no error in the Director’s decision to afford significant adverse weight to the Applicant’s arrests and charges, notably her 2015 arrest shortly after she obtained U nonimmigrant status.

The Applicant also disputes the Director giving limited weight to the reason for her removal order, arguing that the NTA was issued in 2006 when she was a minor and the removal order is now more than 10 years old. We find the Director correctly determined that the Applicant was issued a removal order in 2007 and applicable regulations enable us to consider “all factors” in our discretionary analysis. 8 C.F.R. § 245.24(d)(11).

---

<sup>6</sup> The statutes address unlawful possession of weapons.

On appeal, the Applicant reasserts her positive factors of residence in the United States since she was 17 years old; four U.S. born children who emotionally and financially depend on her; payment of taxes; home ownership; support from her children's teachers and neighbors; harm to her spouse and children without her; and that her native country has systemic violence and lack of a strong government.

We acknowledge the Applicant's favorable equities as reflected in the record. However, on appeal she has not submitted evidence sufficient to overcome the Director's decision that she did not 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 discretion should be exercised in her favor to approve her U adjustment application. From a review of the record as it stands, the Applicant has not established her eligibility to adjust her status under section 245(m) of the Act.

**ORDER:** The appeal is dismissed.