



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

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

In Re: 12458440

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.

A petitioner must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions 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 because the Applicant has not met that burden.

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 a U nonimmigrant 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”).

Applicants bear 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). When exercising its discretion, USCIS may consider all relevant factors, both favorable and adverse, but as stated, U adjustment applicants ultimately bear the burden of establishing eligibility, including that discretion should be exercised in their favor. 8 C.F.R. § 245.24(d)(10)-(11).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, indicates that her parents brought her to the United States at two years old in about 1995 without being admitted, inspected, or paroled. The Applicant was granted U-1 nonimmigrant status for the period from October 2014 through September 2018 and timely filed her U adjustment application in February 2018. The Director determined that the Applicant did not establish that a favorable exercise of discretion was warranted because the mitigating factors did not outweigh the negative equities and that the Applicant did not provide sufficient evidence to establish her adjustment of status is warranted on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. The Applicant has not overcome the Director's determination on appeal.

With the application and in response to the Director's request for evidence (RFE), the Applicant submitted personal affidavits acknowledging her arrests and poor decisions. She took responsibility for her actions, but she provided few details of events. She further stated that she learned from each mistake, accepted consequences, is challenged every day, and overcame hardships. She also submitted criminal records, a GED certificate, an anger management class certificate, financial records, school records for her children, civil documents, and letters of support. With the appeal the Applicant supplements the record with an updated personal statement and additional police reports and court records.

In denying the application the Director identified the Applicant's positive equities as her long residence in the United States, her U.S. citizen children, her employment and payment of taxes, being the victim of domestic violence and her helpfulness in her case, her completion of probation requirements in 2011, and obtaining a GED. The Director concluded, however, that the Applicant had a criminal record before and after obtaining U nonimmigrant status, including a felony conviction, and that her continued arrests raises concern about public safety, the well-being of others, risk to property, and her disregard for the laws of the United States.

The Director determined that from 2010 through 2019 the Applicant had several arrests resulting in numerous charges and included convictions for operating a vehicle under the influence with a minor in the car, battery, and felony bail jumping.¹ The Director detailed the Applicant's behavior that led to her 2011 conviction for battery where the Applicant threatened and then physically struck and kicked another individual, causing the victim to lose consciousness, and that the Applicant intentionally failed to comply with bond terms of having no contact with the victim, which led to the

¹ The Director incorrectly states the one of the Applicant's convictions was for substantial battery. The record shows that although charged with a felony under Wisconsin statute 940.19(2), which includes causing substantial bodily harm to another, the Applicant pled guilty to misdemeanor battery under section 940.19(1).

felony bail jumping conviction. The Director further concluded that the Applicant did not submit police reports or personal statements for several of her arrests, among them her two 2011 arrests for battery; a 2015 arrest for battery, disorderly conduct, and criminal damage to property; and a 2019 arrest for operating a vehicle under the influence.

A review of the Applicant's criminal record submitted below and supplemented on appeal reflects the following: a 2019 dismissed charge for operating a vehicle while intoxicated (OWI) with a minor passenger under 16, second offense; a 2015 guilty plea for misdemeanor operating a vehicle with license revoked; a 2014 guilty plea for misdemeanor OWI with a minor passenger; 2011 misdemeanor convictions for bail jumping and possession of THC along with dismissed charges for possession of drug paraphernalia and operating a vehicle with an invalid license; a 2012 conviction for misdemeanor battery and felony bail jumping, resulting in a sentence of probation, completing anger management, obtaining a GED, and maintaining employment or education; a 2011 conviction for misdemeanor battery with a disorderly conduct charge dismissed; and a 2011 no contest plea to operating a vehicle while license suspended.

On appeal, the Applicant contends that errors in the Director's decision make her criminal history seem worse and skewered the negative aspects against her. She concedes that she has seven misdemeanor convictions and one felony for violating bond while felony charges were pending, and argues that since the original felony charge was amended to simple battery her felony conviction was not for violent or dangerous behavior but rather for violating rules set by a judge. The Applicant asserts that a 2010 vehicle offence was noncriminal; that a 2011 conviction was for misdemeanor battery, not substantial battery as the decision indicates; and that another 2011 conviction was for misdemeanor bail jumping and a single count of possession of THC while other charges were dismissed, but that the Director's decision incorrectly suggests that all charges were sustained. She asserts that the 2014 OWI charge has an inaccurate summary of sentence, although she does not clarify the inaccuracy, and that the 2019 OWI charge before the Director did not show that it was dismissed, which she argues changes the balance. The Applicant maintains that her criminal history ended in 2014 as her arrests in 2015 and 2019 were dismissed and should not be weighted heavily, that charges not proven in court should not to be considered as convictions, and that as police reports try to persuade the trier of fact and justify the arrest they are slanted toward guilt, so charges dismissed or modified show that defendant actions were different than a complaint.

The record shows that in 2011 the Applicant had two physical altercations with another individual, the second after she had been ordered by a judge to avoid contact. A police report of the first incident indicates that the Applicant texted threats before later punching and kicking the other person, and that she admitted to police that she had initiated the fight. A police report of the second incident indicates that the Applicant confronted the victim about reporting the previous incident to police, then proceeded to strike the victim, causing her to briefly lose consciousness. In her affidavit submitted on appeal, the Applicant explains that she had problems with someone, that it was stupid to hit and kick the other person, and that she is sorry for the pain she caused. The Applicant confirms the second incident was because she was mad about the result of the first altercation, admits that she confronted the other person, and describes herself as being immature at the time.

An [] 2011 police report indicates that the Applicant was stopped because the officer knew she had a felony warrant and that during the stop the officer found paraphernalia and a substance later

determined to be THC. The Applicant concedes that she had marijuana in her car and calls it a “stupid time” in her life. A police report for the 2014 OWI charge notes that the officer observed the Applicant’s car swerving and that upon stopping her noticed a “small child” not secured. The Applicant confirms that she had been drinking and states that she is sorry for putting her child in danger.

A police report of the 2015 incident shows that police were called to a domestic disturbance where the Applicant had confronted her ex-boyfriend, threw a beer bottle that struck and damaged a car, and punched him. The Applicant explains that her son’s father was drunk while watching the son, so she became angry, threw a beer bottle at a car, and punched him to retrieve her son from his car seat. A police report for the 2019 incident indicates that the Applicant was stopped for a suspended registration when the officer observed she was intoxicated and that her six-year-old child was asleep on the back seat. The Applicant confirms that at the time she had a child with her in the car and that she admitted to the officer that she had consumed alcohol.

In addition to addressing her arrests, the Applicant further argues on appeal that the Director did not place enough weight on the positives of her length of residence in the United States, the severity of the domestic abuse she suffered, and her care for her children who would suffer if she departs. She also maintains that she worked with her probation officer to complete probation and obtained a GED, and that most of her recent criminal charges have been dismissed. In an affidavit submitted with the adjustment application the Applicant talked about coming to the United States, caring for her children, and the effect on them of being without her or relocating to Mexico.

Although the Applicant addressed some of the Director’s concerns by submitting police reports and a personal statement about her arrests, the arguments advanced on appeal are not sufficient to overcome the discretionary denial of the Applicant’s U adjustment application. First, we do not find any errors in the Director’s decision significant to lead to a differing balance of positive and negative factors. The record shows, and the Applicant concedes, that she has multiple convictions, albeit mostly misdemeanors, in addition to numerous other charges dismissed over a period of about nine years.

The Applicant suggests that dismissed charges and police reports should not be heavily weighed without convictions. We may, however, 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).

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). Although the Applicant’s convictions for battery and felony bail jumping occurred nearly 10 years ago when the Applicant was only about 18 years of age, her actions involved physically aggressive behavior that she admittedly initiated and that resulted in injuries to another person. Moreover, driving under the influence of alcohol is a serious crime that poses a risk to others and a significant adverse factor relevant to our consideration of whether the Applicant warrants a favorable exercise of our discretion. *See Matter of Siniauskas*, 27 I&N Dec. 207, 208-09 (BIA 2018)

(finding DUI a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (BIA 2019) (discussing the "reckless and dangerous nature of the crime of DUI"). In this case, the record shows and the Applicant concedes that her children were passengers on at least two occasions when she was charged with OWI.

Although the Applicant also asserts that the Director did not give proper weight to her positive equities, the Director's decision reflects that these equities were acknowledged and considered, that the information was weighed against the negative factors in the record, and that the Director then found the Applicant did not meet her burden of establishing that a favorable exercise of discretion was warranted. The record does not demonstrate that the Director incorrectly assessed the record. On appeal, the Applicant has not overcome the basis for the Director's denial.

ORDER: The appeal is dismissed.