U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31918305

Date: MAY 3, 2024

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on his "U" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application) and dismissed the motion to reopen, concluding that the record did not establish the Applicant's adverse factors outweighed the favorable factors such that his case merited approval in the exercise of discretion. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if they meet all other eligibility requirements and, "in the opinion" of USCIS, 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. The applicant bears 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). This burden includes establishing that discretion should be exercised in their favor, and USCIS may take into account all relevant factors in making its discretionary determination. 8 C.F.R. §§ 245.24(b)(6), (d)(11).

A favorable exercise of discretion to grant an applicant adjustment of status to that of an 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). However, where adverse factors are present, the applicant may submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.24(d)(11) (providing 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 Applicant, a native and citizen of Mexico, was granted U nonimmigrant status from October 2015 until September 2019 and his status was extended until August 2021. He filed the instant U adjustment application in July 2021. The Director denied the application, determining that the Applicant had not demonstrated that his adjustment of status to that of an LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. The Director concluded that the Applicant's criminal history, specifically his 2017 arrest for felony child abuse of a child 8 years old or less and misdemeanor domestic assault, outweighed the positive and mitigating equities, to include the trauma he suffered as a victim of felonious assault, the letters of support from colleagues, and his family ties and length of residence in the United States, such that discretion should not be exercised in his favor.

The Applicant made the following assertions in his affidavit: he learned about his arrest warrant when he was involved in a traffic accident in 2017; his former girlfriend brought false charges of assaulting her and her son as revenge because she was previously arrested for assaulting him; the judge stated that the Applicant never hit his former girlfriend's child and her statement was false and he "won the case"; the Applicant could have fought the domestic violence charge but chose not to and he "was faced with 6 months of school and was on probation"; and both charges were ultimately dismissed and expunged from his record. In denying the application, the Director found that the record lacked sufficient evidence to support the Applicant's assertions regarding the circumstances leading to the arrest and the reasons for the dismissal of the charges remained unclear.

The Applicant submitted a motion to reopen with additional evidence, to include arrest warrants for both offenses, an Under Advisement Plea with the "Dual MRT/BIP Program, 26 weeks"[1] option selected, a Correctional Management Systems Program Compliance Letter that indicated the Applicant completed a "26 week BIP Domestic Violence Program", documents related to a 2015 arrest of the Applicant's former girlfriend for misdemeanor assault against the Applicant, and court records regarding the custody of their child. The warrant for the 2016 domestic assault offense noted the Applicant grabbed his former girlfriend's wrists; squeezed them for 10 minutes; and her visible bruising was photographed by the reporting officer, who transported the victim to the hospital for further treatment. During the 2017 child abuse incident, the warrant reflected that the Applicant grabbed his former girlfriend's eight-year-old son by the legs when he was in bed and dropped him on the floor, resulting in bruises on his side, back, leg, and arm. The child indicated that the Applicant had been yelling at his mother prior to coming into his room; his sister, who was in the room at the time, gave a similar account of the events; and pictures of the child's injuries were provided to police.

[1] According to publicly available information, MRT is Moral Reconation Therapy and BIP is Batterers' Intervention Program.

The Applicant asserted that he never admitted guilt or was found guilty of either charge, he did not enter into a diversion program in which the consequences of not completing an agreed rehabilitation program or probation period would result in enforcement of an imposed sentence, he agreed to do what was suggested though not ordered to have the case go away; and the Under Advisement Plea did not contain information stating what would happen if he did not complete the class because there was no consequence for not completing it. The Director dismissed the motion to reopen, concluding that the new evidence did not overcome the grounds for denial of the U adjustment application. The Director noted that though the Applicant stated he was on probation as a result of the domestic violence charge, he did not submit evidence of any sentencing; the Under Advisement Plea indicated he was recommended to participate in a "Dual MRT/BIP Program" but the Correctional Management Systems Program Compliance Letter only reflected that he completed the "BIP Domestic Violence Program"; and due to the lack of sufficient documentation, the Director cannot ascertain whether these programs were part of a sentencing that also included probation. The Director's decisions describe the facts and analysis of the Applicant's case in detail, and we incorporate them by reference here.

On appeal, the Applicant asserts that the Director erred by basing the denial of his U adjustment application on a misapplication of law with the available facts. The Applicant refers to the additional evidence submitted to the Director with his motion to reopen and argues that the record as a whole exemplifies his good character and that his case warrants a favorable exercise of discretion.

Upon de novo review, we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). 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). In this case, the Applicant was arrested in 2017 and charged with felony child abuse of a child 8 years old or less and misdemeanor domestic assault. We consider the misconduct to be especially serious as it is violent in nature and the misconduct in one of the incidents is against a young child. Moreover, the events occurred while the Applicant was in U status, which is an additional serious adverse factor. Regardless of whether the misconduct resulted in a charge or conviction, it is appropriate for us to consider the factual information contained in police and court records, as all relevant factors concerning an arrest and conviction should be taken into account in exercising our discretion. *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988).

Here, the Applicant asserts that he did not harm his former girlfriend or her young child and contends that the dismissal of the charges corroborates his assertion that he did not commit the alleged offenses. However, even if the Applicant was not ultimately convicted of the charges, that does not equate with a finding that the underlying conduct or behavior leading to those charges did not occur or that the charges were unsubstantiated. *See* 8 C.F.R. § 245.24(d)(11) (stating that USCIS may take into account all factors in making its discretionary determination and that it "will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of" certain classes of crimes). We note that the submitted arrest warrants detail harm inflicted upon the Applicant's

former girlfriend and her young son on two separate occasions and the dismissal of the serious charges does not establish that the Applicant did not engage in the reported misconduct.

Ultimately, it is the Applicant's burden to establish that he warrants adjustment of status to that of an LPR as a matter of discretion. There is insufficient evidence to establish that the Applicant's arrests should not be considered as adverse factors in his case or, alternatively, that lesser weight should be accorded to such evidence. Thus, considering both the recency and serious nature of the Applicant's criminal history while he maintained U nonimmigrant status, the adverse factors in the case continue to outweigh the favorable and mitigating factors. Accordingly, the Applicant has not established by a preponderance of the evidence that he warrants a favorable exercise of discretion, and he remains ineligible for adjustment of status under section 245(m) of the Act.

ORDER: The appeal is dismissed.