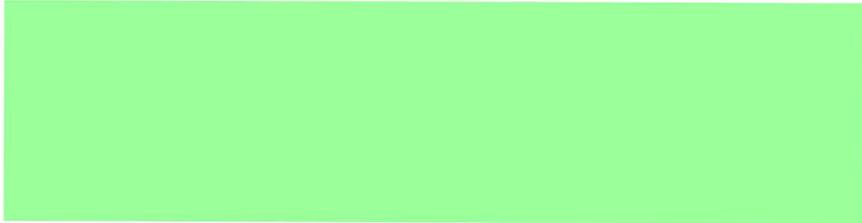


(b)(6)

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

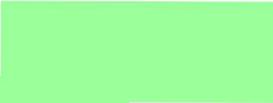


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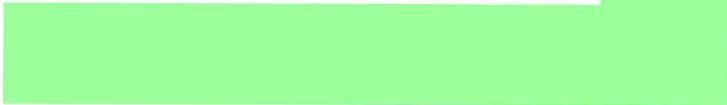
VERMONT SERVICE CENTER

FILE:



IN RE:

APPLICANT:



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:



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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

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 applicant filed a motion to reopen and reconsider the director's denial decision. The director granted the motion to reconsider but affirmed his previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will remain denied.

The applicant, who was granted U-3 nonimmigrant status, seeks to adjust his 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).

Facts and Procedural History

The applicant was initially granted interim relief on December 20, 2006 based upon a request for U nonimmigrant status pending publication of the U nonimmigrant visa interim rule. On May 17, 2010, the director approved the applicant's Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition). The applicant's U-3 status was valid from December 20, 2006, when he was granted interim relief, until April 19, 2011. The applicant filed the instant Form I-485 on April 6, 2011, and the director denied the applicant's adjustment of status application because the adverse factors in the applicant's case outweighed the positive factors, and he failed to establish that his continued presence is justified on humanitarian grounds, to ensure family unity, or is in the public interest. The applicant filed a motion to reopen and reconsider the director's decision. The director granted the motion to reconsider but affirmed his previous decision. The applicant timely appealed the denial of his Form I-485.

On appeal, counsel submits a brief stating that the applicant merits a favorable exercise of discretion because of his strong family ties to the United States, his employment history, and his years of physical presence in the United States. Counsel also submits additional evidence and copies of documents already included in the record.

Analysis

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Based on the evidence in the record, we find no error in the director's decision to deny the applicant's adjustment of status application.

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 his 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).

On July 13, 2008, the applicant was arrested for possession of marijuana. On May 26, 2009, he was convicted of possession of marijuana, in the amount of four ounces to five pounds, and was sentenced to two years of probation. On October 13, 2010, the applicant was arrested for possession with intent to deliver a controlled substance, cocaine. On August 22, 2011, he was convicted of possession of a controlled substance, and was sentenced to five years of probation. On appeal, counsel claims that the applicant has demonstrated his rehabilitation, shown by his involvement with his church, narcotics anonymous, and counseling sessions. Counsel states that the applicant suffers from post-traumatic stress disorder (PTSD) related to the abuse he suffered as a child and from witnessing his mother's physical abuse by his stepfather. He contends that the applicant's "criminal actions were a direct result of the victimization that he suffered as a child." Evidence in the record shows that the applicant's victimization may have contributed to his drug use, but it does not support counsel's contention that the applicant's criminal behavior was a direct result of his victimization. Mental health documents in the record show that the applicant was diagnosed with PTSD; however, the counselor relates the applicant's criminal behavior to the depression he suffered after his girlfriend cheated on him and his financial struggles. Moreover, the applicant's crimes occurred over eight years after his own victimization by his stepfather. The applicant's PTSD diagnosis does not negate his culpability, nor does the record show that when he committed the crimes, he was unable to understand the wrongfulness of his behavior. In fact, in his statement dated November 17, 2011, the applicant admits that he knew that what he "was doing was wrong." While the record establishes that the applicant was the victim of abuse and suffers from a mental health disorder, the overall evidence does not establish that the applicant's presence in the United States is justified on humanitarian grounds when balanced against the negative factors.

Counsel claims that the applicant has important family ties in the United States, and he supports his three U.S. citizen children and U.S. citizen wife. The applicant states his entire family is in the United States, he has no family in Mexico, and he would be "lost" there. Counsel notes that the applicant has resided in

the United States since 1999, he no longer uses drugs, and he is gainfully employed. However, the record shows that not only was the applicant using drugs but he was also selling them. *See* Psychological Evaluation dated September 25, 2012 at 41-42. Counsel alleges that the applicant was placed on community supervision after he showed the criminal court judge that he was becoming a “better person” and he wanted to be a “role model to his children,” but the record shows that the applicant has not completed his probation. In addition, the applicant claimed that he was rehabilitated after his first drug conviction, and was granted a waiver for his drug related inadmissibility charge on April 20, 2010, but then he was arrested and convicted again for another drug offense in 2011. Moreover, the applicant’s last conviction occurred less than three years ago. Counsel reports that the applicant attended counseling and narcotics anonymous voluntarily, and he has gotten “closer to his church.” Counsel’s assertions are insufficient to show that the applicant’s presence in the United States would be in the interest of the public given his multiple drug-related convictions. As noted above, only the most compelling positive factors would justify a favorable exercise of discretion when the applicant has been convicted of multiple drug-related crimes.

The favorable and mitigating factors in the present case are the applicant’s family in the United States and his history of employment. However, only the most compelling positive factors would justify a favorable exercise of discretion since the record shows that the applicant has been convicted of multiple drug-related crimes. *See* 8 C.F.R. § 245.24(d)(11). The unfavorable factors are the petitioner’s multiple convictions for drug-related crimes, including his most recent drug conviction that occurred after he had proclaimed his rehabilitation, and that he is still on probation. In addition, other adverse factors include the applicant’s entry into the United States without inspection and unlawful presence in the United States. The AAO finds that when taken together, the adverse factors in the present case outweigh the favorable factors; therefore, the AAO concurs with the director’s negative discretionary finding and denies the applicant’s application on discretionary grounds.

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 not been met as to the applicant’s eligibility to adjust status under section 245(m)(1) of the Act and the appeal shall be dismissed.

ORDER: The appeal is dismissed. The application remains denied.