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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

DATE: **APR 17 2015**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application to Adjust Status (Form I-485) for an Alien in U Nonimmigrant Status Pursuant to Section 245(m) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)

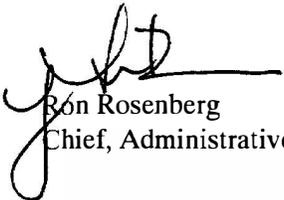
ON BEHALF OF APPLICANT:  
[REDACTED]

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 or 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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, who was granted U-3 nonimmigrant status, seeks to adjust his status under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The director denied the application because the applicant failed to demonstrate that he was eligible for adjustment of status as a matter of discretion and that his adjustment of status would be in the public interest.

*Applicable Law*

Section 245(m) of the Act states, in pertinent part:

- (1) 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 CFR § 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 CFR § 214.14(h).

Regarding the duration of U nonimmigrant status, section 214(p)(6) of the Act, 8 U.S.C. § 1184(p)(6) states, in pertinent part:

The authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity . . . that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity. The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien's nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 245(m) and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 245(m).

The burden of proof is on the applicant to demonstrate eligibility for the immigration benefit he seeks. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010).

#### *Facts and Procedural History*

On February 8, 2010, the director granted U-3 nonimmigrant status to the applicant based upon an approved Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) that his mother filed on his behalf. The applicant filed the instant Application to Register Permanent Residence or Adjust Status (Form I-485) on July 30, 2013. The director issued a Request for Evidence (RFE) regarding the applicant's criminal history. The applicant responded to the RFE with an affidavit and additional evidence. The director denied the applicant's adjustment of status application because the applicant had failed to show that the positive equities in his case outweighed the negative or that his adjustment of status would be in the public interest. Specifically, the director found that the applicant has a serious criminal history and has admitted being a member of a gang.

#### *Analysis*

We conduct appellate review on a *de novo* basis. 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). Although 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 the adverse factors, the applicant may be required to demonstrate 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.*; *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); *Mejia 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).

In *Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the Board of Immigration Appeals (BIA) stated, “[w]e have consistently held that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes.” *Devison-Charles* at 1365; *see also Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). The BIA added, “[w]e have also held that the standards established by Congress, as embodied in the FJDA (Federal Juvenile Delinquency Act), govern whether an offense is to be considered an act of delinquency or a crime.” *Devison-Charles* at 1365. The FJDA defines a “juvenile” as “a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday,” and “juvenile delinquency” as “the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.” *Ramirez-Rivero* at 137 (citing 18 U.S.C. § 5031).

Although an act of juvenile delinquency is not a criminal conviction on which to base removal or bar relief from removal, a juvenile offense can be considered in reviewing an application for a discretionary benefit, such as adjustment of status. *Wallace v. Gonzales*, 463 F.3d 135 (2d Cir. 2006); *see* 8 C.F.R. § 245.24(d)(11).

The applicant’s history of arrests and convictions is as follows:

- On [REDACTED] 2008, the applicant was arrested for possession of a firearm at a school, possession of a firearm without a license, and knowing possession of a stolen firearm. He admitted to the charge of possession of a firearm at a school and was sentenced to 90 days in juvenile custody. The other charges were dismissed pursuant to plea bargain.
- On [REDACTED] 2012, the applicant was arrested for possession of a loaded firearm in a public place, possession of a loaded firearm in a vehicle while in a public place, possession of a loaded firearm not registered to himself, possession of more than 28.5 grams of marijuana, use of a false and fraudulently altered identity document, and knowingly giving false information to a peace officer in the performance of his duties. He pled guilty to possession of a loaded firearm in a public place and was sentenced to 45 days in jail and three years of probation. The other charges were dismissed.
- On [REDACTED] 2014, the applicant was arrested for evading a police officer. The disposition of this arrest is not documented in the record.

On appeal, the applicant contends that he only has one conviction for immigration purposes, and that the crime was not a crime of violence or a crime involving moral turpitude. He also states that he was required to register as a gang member in relation to his first arrest, when he was [REDACTED] years old, but that his other arrests have not involved allegations of gang membership. Therefore, he asserts that his criminal history does not outweigh the positive factors in his case.

In an affidavit submitted on appeal, the applicant states that he has never been a member of a gang. He claims that the sentence relating to his first arrest required that he register as a gang member, earn a high school diploma, and wear an ankle bracelet, so he complied with those requirements. He asserts that he is trying to work hard and is not a danger to anyone. The applicant has also submitted affidavits from two friends who state that they know the applicant well and have never known him to be a member of a gang.

In an affidavit submitted with his RFE response, the applicant claimed that on [REDACTED] 2012, when he was arrested for possession of a gun in a vehicle, he was driving a truck he had borrowed from his uncle and the gun belonged to his uncle. He stated that he did not want to tell the police officer that the truck and gun were his uncle's because he feared his uncle would get in trouble. The applicant asserted that although the gun did not belong to him, he decided to accept a plea deal because he feared that going to trial would result in a longer prison sentence. He stated that he was sentenced to 45 days in jail, but was released after 20 days for good behavior. The applicant also asserted in his affidavit that on [REDACTED] 2014, a police officer pulled him over and accused him of speeding and of not stopping when the officer signaled him to stop. The applicant stated that he had not seen the officer prior to pulling into his friend's driveway, but he was arrested because his friend denied knowing him, giving the officer the impression that the applicant had pulled into the driveway to hide. He also claimed that although the officer said the applicant was "going much faster" than the speed limit, he was only "going a little faster than [he] should have been." The applicant also indicated that he is sorry about his arrests, is not trying to do anything wrong, and is trying to work and help support his mother.

In his brief on appeal, dated September 12, 2014, the applicant states that his 2014 arrest was resolved and only resulted in a speeding ticket. He also stated that he would submit the records of that matter within 30 days, but we have not received any additional evidence as of the date of this decision.

We find that the applicant has failed to demonstrate that the factors in his favor outweigh the negative factors. The negative factors in this case are the applicant's arrests, juvenile delinquency adjudication, and conviction. On [REDACTED] 2008, the applicant was adjudicated delinquent for possession of a loaded firearm at a school in violation of Cal. Penal Code § 626.9(b). He admitted to the charges and was sentenced to 90 days in juvenile detention. Although the applicant correctly notes that his juvenile adjudication is not a conviction for immigration purposes, it is still relevant to our discretionary determination. A violation of Cal. Penal Code § 626.9(b), a felony, involves possessing a firearm in a place that a person knows, or reasonably should know, is a school zone. Pursuant to Cal. Penal Code § 626.9(f)(1), a violation of Cal. Penal Code § 626.9(b) involving possession of a firearm on the grounds of a school providing instruction in kindergarten through grade 12 is punishable by imprisonment for up to five years. The police report regarding the incident states that the applicant brought a loaded handgun to his high school in order to protect himself against students who had threatened him. He told police officials that he was a member of the [REDACTED] gang and that the students who threatened him were members of the [REDACTED] gang. Although

it is not a conviction, the applicant's juvenile delinquency determination under Cal. Penal Code § 626.9(b) stemmed from a serious incident involving a risk to other children at a school.

Additionally, the evidence shows that the applicant admitted gang membership in relation to the 2008 incident. The juvenile court ordered him to register as a gang member, avoid gang members and places where gang members congregate or where gang activity occurs, not possess or wear gang clothing or symbols, and not obtain any gang-related tattoos, piercings, head shavings, or other signs of gang involvement. Although he claims on appeal that he was not a member of a gang and only registered as a gang member because it was a requirement in his juvenile delinquency adjudication, this is inconsistent with his admission of gang membership at the time of his arrest and the juvenile court's order that he register as a gang member and avoid gang-related activities, people, and places.

Furthermore, the applicant committed another firearms-related offense on [REDACTED] 2012, when he was [REDACTED] years old. He was convicted of possession of a loaded firearm in a vehicle while in a public place in violation of Cal. Penal Code § 12031(a)(1)<sup>1</sup> and sentenced to 45 days in jail and three years of probation. The applicant asserts on appeal that his conviction should not prevent him from adjusting his status because it was not a crime of violence or a crime involving moral turpitude. We need not decide this issue, as it is appropriate to consider the applicant's conviction in our discretionary determination regardless of whether it is a crime of violence or a crime involving moral turpitude. Although the applicant claims that neither the vehicle nor the firearm belonged to him, the conviction records do not support his claim. Also, this claim indicates that he has not taken responsibility for his conviction, which does not support a finding that he has been rehabilitated.

Finally, the applicant has failed to submit documentation of the disposition of his final arrest on [REDACTED] 2014, for evading a police officer. Although he states on appeal that he only received a speeding ticket, there is no evidence in the record to support his statement.

The favorable factors in this case are the applicant's residence in the United States since he was a young child, his close family ties in the United States with his mother and brother, the fact that he has obtained employment, the support he has from friends as expressed in two letters, and his statement that he regrets his past mistakes and intends to work and help his mother. However, we do not find that these positive equities outweigh the applicant's conviction, his history of arrests, the most recent of which occurred in 2014, his juvenile delinquency related to possession of a loaded firearm at school, or the evidence that he was a member of a gang. The applicant bears the burden of proof of demonstrating that he merits adjustment of status as a matter of discretion, and he has not met that burden. Accordingly, we will dismiss his appeal.

### *Conclusion*

In these proceedings, the applicant bears the burden of proving his eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec.

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<sup>1</sup> This section is now renumbered as Cal. Penal Code § 25850(a).

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*NON-PRECEDENT DECISION*

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127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

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