



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 30 2015**

FILE #: [REDACTED]
APPLICATION RECEIPT #: [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)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)(1)

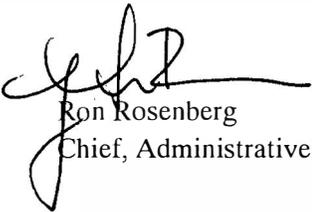
ON BEHALF OF APPLICANT:

[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the application. 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)(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 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).

Facts and Procedural History

On July 13, 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's U-3 status was valid from July 13, 2010, until July 12, 2014. The applicant filed the instant Application to Register Permanent Residence or Adjust Status (Form I-485) on July 22, 2013, 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 the public interest. The applicant timely appealed the denial of his Form I-485. On appeal, the applicant claims that he has been rehabilitated, he is an asset to his family, he is employed, and he will suffer hardship if he returns to Mexico. He also submits copies of documents already included in the record.

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). 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).

The record shows that the applicant was arrested on [REDACTED] 2008, for petty theft-shoplifting, in violation of California Penal Code (CPC) § 488;¹ on [REDACTED], 2011, for possessing an instrument of graffiti, in violation of CPC § 594.1(e)(1);² on [REDACTED] 2012, for entering school grounds that he had been denied access to and resisting arrest, in violation of CPC §§ 626.2 and 148(a)(1), respectively;³ on [REDACTED] 2012, for burglary and manufacturing an illegal weapon as a gang member, in violation of CPC §§ 664/459, 186.22(b)(1)(c), 12020(a)(1), and 186.22(a);⁴ and on [REDACTED] 2012, for battery as a gang member, in violation of CPC §§ 242 and 186.22(d).⁵ On [REDACTED] 2012, the applicant was committed to 164 months in the Department Commitment Program, and on [REDACTED], 2013, all of the applicant's delinquency proceedings were dismissed.

On appeal, the applicant acknowledges that he had some criminal problems as a juvenile but his juvenile convictions were dismissed, and as an adult, he has had no similar problems. The record shows that as a juvenile, the applicant was arrested for numerous crimes and he completed a probation camp program which resulted in the dismissal of all delinquency proceedings against the applicant; however, it appears that the applicant was recently convicted of violating CPC § 25850(a) (carrying a loaded firearm in public) and is currently incarcerated in [REDACTED] California (case number: [REDACTED]). We note that the applicant does not address this recent conviction on appeal. Regarding his previous arrests, in response to the Request for Evidence (RFE), the applicant claims that on [REDACTED] 2011, he was arrested for riding a bike with no reflectors or a light; however, the court documents establish that the applicant was arrested for possessing an instrument of graffiti. The applicant also claims that on [REDACTED] 2012, he was arrested for trespassing on school grounds from which he had been expelled but he did not mention that he was also arrested for resisting arrest. In addition, the applicant did not indicate that he is/was a member of a gang and some of his arrests were related to gang activity. We note that because the applicant's description of his previous arrests are contradicted by the court documents in the record, it does not appear that he has taken responsibility for his actions.

The applicant claims that he has been in the United States since he was 11 years old, he is rehabilitated, he is gainfully employed, he an asset to his family, and he has no family in Mexico. However, 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. The applicant's claims are insufficient

¹ Case number: [REDACTED]

² Case number: [REDACTED]

³ Case number: [REDACTED]

⁴ Case number: [REDACTED]

⁵ Case number: [REDACTED]

to show that his presence in the United States would be in the interest of the public given his arrests for, and admission to the facts of, serious violent crimes. As noted above, only the most compelling positive factors would justify a favorable exercise of discretion when the applicant has committed serious violent crimes. In addition, the crimes committed by the applicant were related to gang activity, and the applicant is currently incarcerated for carrying a loaded firearm in public.

The favorable and mitigating factors in the present case are the applicant's many years of living in and family in the United States, and his recent history of employment. However, only the most compelling positive factors would justify a favorable exercise of discretion since the record shows and the applicant admits that he committed serious violent crimes. *See* 8 C.F.R. § 245.24(d)(11). The unfavorable factors are the applicant's juvenile criminal convictions, his recent conviction in 2014, his entry into the United States without inspection and his unlawful presence in the United States. We find that when taken together, the adverse factors in the present case outweigh the favorable factors; therefore, we concur with the director's negative discretionary finding and deny 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.