



U.S. Citizenship
and Immigration
Services

(b)(6)



APR 30 2015

DATE:

FILE #:

APPLICATION RECEIPT #:

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:



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-1 nonimmigrant status, seeks to adjust her 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 October 30, 2009, the director approved the applicant's Petition for U Nonimmigrant Status (Form I-918 U petition). The applicant's U-1 status was valid from October 30, 2009, until October 29, 2013. The applicant filed the instant Application to Register Permanent Residence or Adjust Status (Form I-485) on May 24, 2013. On November 5, 2013, the director issued a Request for Evidence (RFE) of the applicant's ongoing helpfulness, her continuous physical presence in the United States since her admission as a U nonimmigrant, a self-affidavit attesting to her continuous physical presence, a copy of all the pages of her passport, a completed Biographic Information Sheet (G-325A), and evidence of her arrests and/or convictions. The applicant responded with additional evidence; however, the director denied the application because the applicant failed to submit a self-affidavit attesting to her continuous physical presence in the United States and a complete copy of all the pages of her valid passport. In addition, the director noted that because the applicant failed to submit the requested documentation related to her criminal history, the director was unable to weigh the positive and negative factors in the applicant's case in order to determine whether or not her continued presence in the United States was justified. On appeal, the applicant submits a self-affidavit indicating that she has been continuously present in the United States and has not returned to Kenya since she entered, a copy of all the pages of her current passport, additional evidence, and 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.

The director, in part, denied the applicant's adjustment of status application because the applicant did not submit a self-affidavit attesting to her continuous physical presence in the United States and a complete copy of all the pages of her valid passport. However, on appeal, the applicant submitted a self-affidavit regarding her continuous physical presence in the United States and a copy of all the pages of her valid passport, which expires on April 1, 2024. Therefore, these portions of the director's decision will be withdrawn.

However, the applicant has failed to submit all the relevant documents related to her criminal history. 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 her 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], 2011, for assault and battery with a dangerous weapon (coffee mug), in violation of Massachusetts General Law chapter 265.15A. On appeal, the applicant submits the criminal complaint, the arrest report, and a petition to seal her record; however, she failed to submit the final disposition on the criminal charge. In her personal statement submitted on appeal, the applicant admits that she "had a domestic incident with [her] daughter . . . during which [the applicant] threw a cup at her for being rude after she had refused to go to school," and the arrest report also indicates that the applicant threw a cup at her daughter, who was injured as a result. We note that the applicant failed to provide a probative description of the incident or court records confirming that the case was dismissed against her.

The applicant claims that when she arrived in the United States in 2002, she suffered years of abuse by her husband. She states that she is currently employed, she files her taxes, she volunteers at her church, and she supports her family. While the record establishes that the applicant was the victim of abuse, 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 to show that her presence in the United States would be in the interest of the public given her arrest for, and admission to the facts of, a serious violent crime. Furthermore, the applicant failed to show any remorse for her actions. As noted above, only the most compelling positive factors would justify a favorable exercise of discretion when the applicant has committed a serious violent crime.

The favorable and mitigating factors in the present case are the applicant's family in the United States and her 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 she committed a serious violent crime. *See* 8 C.F.R. § 245.24(d)(11). The unfavorable factors are the petitioner's arrest for assault and battery and her 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 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.