



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-A-M-F-

DATE: DEC. 22, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE
OR ADJUST STATUS

The Applicant, who was granted U-1 nonimmigrant status, seeks to adjust his status to lawful permanent resident. *See* Immigration and Nationality Act (the Act) § 245(m), 8 U.S.C. § 1255(m). The Director, Vermont Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

I. 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).

II. FACTS AND PROCEDURAL HISTORY

On September 16, 2009, the Director granted U-1 nonimmigrant status to the Applicant based upon an approved Form I-918, Petition for U Nonimmigrant Status. The Applicant filed a Form I-485 on March 22, 2013. The Director issued a request for evidence (RFE) seeking information, in part, regarding the Applicant's criminal history. The Applicant responded to the RFE with additional evidence which the Director found insufficient to establish 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 had a serious criminal history, including a juvenile adjudication for sexual abuse of a minor, and convictions as an adult for theft, sexual abuse of a minor, and driving under the influence of intoxicants (DUI). Therefore, the Director denied the Form I-485 as a matter of discretion. The Applicant filed a timely appeal.

On appeal, the Applicant submits a brief and additional evidence. We conduct appellate review *de novo*. Based on the evidence in the record as supplemented on appeal, we find no error in the Director's decision to deny the Applicant's Form I-485 in the exercise of discretion.

III. ANALYSIS

Under Section 245(m) of the Act, adjustment of status is 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 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 Pimentel 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 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. *See Wallace v. Gonzales*, 463 F.3d 135 (2d Cir. 2006); 8 C.F.R. § 245.24(d)(11).

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The Applicant was arrested and convicted of the following offenses:

- On [REDACTED] 2008, the [REDACTED] Juvenile Department entered a judgment of delinquency, pursuant to the Applicant's admission, of violating Or. Rev. Stat. § 163.415, a Class A misdemeanor (sexual abuse in the third degree). Two counts of harassment, one count of attempted strangulation, and one count of attempted sexual abuse in the first degree were dismissed pursuant to a plea bargain. The Applicant was sentenced to eight days of detention (suspended), five years of formal probation, completion of a Moral Reconciliation Therapy program, and 36 hours of community service.
- On [REDACTED] 2008, the [REDACTED] Circuit Court convicted the Applicant, pursuant to his guilty plea, of violating Or. Rev. Stat. § 164.045 (theft in the second degree), a Class A misdemeanor, and sentenced him to 18 months of probation, 40 hours of community service, theft counseling, and payment of fees. The record indicates that the Applicant violated the terms of probation, resulting in an order accelerating completion of community service to within 60 days.
- On [REDACTED] 2013, the [REDACTED] Circuit Court convicted the Applicant, pursuant to his guilty plea, of two counts of violating Or. Rev. Stat. § 163.425 (sexual abuse in the second degree), a Class C felony. Two counts of assault (domestic violence), one count of second degree sexual abuse, and two counts of rape were dismissed pursuant to a plea bargain. The Applicant was sentenced to five years formal probation, completion of a sex offender treatment program and domestic violence/anger classes, and payment of fees. The Applicant was ordered to have no contact with minor females without written permission, and to register as a sex offender for life.
- On [REDACTED], 2014, the [REDACTED] Circuit Court convicted the Applicant, pursuant to his guilty plea, of violating Or. Rev. Stat. § 813.010 (DUI), a misdemeanor, and ordered him to pay a fine. The Applicant was also found to have violated his probation and ordered to attend alcohol treatment classes.

With reference to the 2008 judgment of delinquency, the Applicant states he was [REDACTED] and the victim was his girlfriend, who was [REDACTED]. He denies any violence or attempted strangulation as alleged by the victim, and he indicates that he was under the influence of marijuana due to coercion at the time of the offense. With reference to the 2013 conviction, the Applicant contends that he did not know his girlfriend was under 18 and that, because the age difference between him and the victim was fewer than four years, his sexual abuse conviction should not prevent him from adjusting his status because it is not a crime involving moral turpitude. Notwithstanding the Applicant's assertion, it is appropriate to consider the Applicant's sexual abuse conviction regardless of whether it is a crime involving moral turpitude. He explains that the DUI conviction followed his serving drinks at a

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family wedding, after which he admitted that he drove to his worksite so as not to be late for work the following day, and that when he was tested, his blood alcohol content was just above the legal limit.

The Applicant refers to the 2008 report of Dr. [REDACTED] which predates the 2013 and 2014 convictions, who evaluated the Applicant and found his risk of criminal recidivism to be low. The Applicant also submits a letter from [REDACTED] indicating that he is complying with the terms of probation, which will end in January 2018. She states that the Applicant has attended sexual offender counseling since February 2013 and is attending alcohol treatment. The Applicant submits copies of tax returns indicating that he filed income taxes in 2012 and 2013, and letters from several friends who attest that the Applicant works with a youth group at [REDACTED] has undergone a spiritual transformation in the past few years, works very hard, and has positive energy and a generous spirit. The record also contains letters from former teachers and volunteer coordinators describing the Applicant's many fine qualities and leadership potential. None of the Applicant's witnesses indicates knowledge of the Applicant's criminal history. The Applicant describes a loving and supportive family life with his father, step-mother and three brothers, and states that he provides financial support for his family and U.S. citizen child. He submits receipts indicating payment of court ordered fees and fines. He states that he was the first in his family to receive a high school diploma.

The Applicant has not demonstrated that the factors in his favor outweigh the negative factors. The negative factors in this case are the Applicant's juvenile delinquency adjudication for the sexual abuse of a minor, and adult convictions for sexual abuse of a minor, theft, driving under intoxication, and probation violations. The DUI and sexual abuse convictions were based on incidents that occurred in the past two years, and the Applicant remains on probation until 2018. On appeal, the Applicant denies violent treatment of any female despite evidence to the contrary in the record, attempts to mitigate his culpability by claiming that he was coerced into smoking marijuana that caused him to commit the offense that led to the 2008 conviction, denies knowing that the victim in the 2013 conviction was a minor, and argues that his blood alcohol content was just above the legal limit and that resulted in the 2014 conviction.

The favorable factors in this case are the Applicant's close family ties in the United States, his payment of income taxes, his consistent employment during 2012 and 2013, and the support of many family members, friends, teachers, and professional references. However, these positive equities do not outweigh the Applicant's juvenile offense and adult convictions, two of which occurred relatively recently, in 2013 and 2014, and included extremely serious offenses and a conviction relating to the sexual abuse of a minor. Only the most compelling positive factors would justify a favorable exercise of discretion in cases where an applicant has been convicted of a crime involving sexual abuse committed upon a child. 8 C.F.R. § 245.24(d)(11). The recent nature of the offenses, the fact that the Applicant is still serving a sentence of formal probation, and his lack of remorse for any of the offenses, reflect that the Applicant has not been fully rehabilitated.

The Applicant does not claim on appeal that he would suffer exceptional and extremely unusual hardship if he were removed. The regulations provide that, where the adverse factors are

particularly serious, an Applicant may demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. 8 C.F.R. § 245.24(d)(11). This is not an alternative method of demonstrating eligibility, but one of the many factors that USCIS may consider in its discretionary determination. Here, the Applicant does not claim any particular hardship that he would suffer if he were removed. For this and the foregoing reasons, the evidence of record does not support a finding that the Applicant merits adjustment of status in the exercise of discretion.

When viewed in their totality, the negative factors in the present case outweigh the positive factors. Accordingly, the Applicant has not demonstrated that he is rehabilitated or that his adjustment of status is warranted for humanitarian reasons, for family unity, or is otherwise in the public interest.

IV. 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. § 245.24(b),(d); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of M-A-M-F-*, ID# 14811 (AAO Dec. 22, 2015)