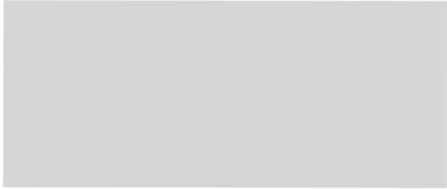


(b)(6)

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



DATE: **JUN 02 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) of the Immigration and Nationality Act, 8 U.S.C. § 1255(m)

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,

A handwritten signature in black ink that reads "URosenberg".

 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 his status under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, because the evidence was insufficient to demonstrate that the positive factors in this case outweighed the applicant's criminal history or that he was rehabilitated. The director also found that the record lacked copies of the applicant's valid passport or a sufficient explanation as to why he could not meet this requirement.

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).

(d) *Application Procedures for U nonimmigrants.* Each U nonimmigrant who is requesting adjustment of status must submit:

* * *

(5) A photocopy of all pages of all of the applicant's passports valid during the required period (or equivalent travel document or a valid explanation of why the applicant does not have a passport) and documentation showing the following:

(i) The date of any departure from the United States during the period that the applicant was in U nonimmigrant status;

(ii) The date, manner, and place of each return to the United States during the period that the applicant was in U nonimmigrant status; and

(iii) If the applicant has been absent from the United States for any period in excess of 90 days or for any periods in the aggregate of 180 days or more, a certification from the investigating or

prosecuting agency that the absences were necessary to assist in the investigation or prosecution of the criminal activity or were otherwise justified[.]

Facts and Procedural History

The applicant is a native and citizen of Mexico who claims to have last entered the United States in June 2005 without inspection, admission, or parole.¹ The director granted U-1 nonimmigrant status to the applicant based upon an approved Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition) valid from May 12, 2009 to May 11, 2013. The applicant filed the instant Form I-485 on May 10, 2013. The director issued a Request for Evidence (RFE) to obtain copies of the applicant's passport or an explanation as to why the applicant did not have a valid passport during his period of U nonimmigrant status. The director also requested evidence that the applicant had continued to be helpful to law enforcement since being admitted as a U nonimmigrant and documentation regarding the applicant's criminal history. The applicant responded to the RFE with an affidavit and additional evidence. The director found that the applicant's explanation regarding his inability to provide copies of his passport was insufficient. Additionally, the director noted that, despite claiming to have been rehabilitated from a previous criminal history at the time he applied for U nonimmigrant status, the applicant had additional arrests, parole violations, and violations of restraining orders after his Form I-918 U petition was approved. Therefore, the director found that the negative factors outweighed the positive and that the applicant did not establish that adjustment of status would be in the public interest.

Analysis

We conduct appellate review on a *de novo* basis. Upon review of the record, we find no error in the director's decision to deny the adjustment of status application.

The regulation at 8 C.F.R. § 245.24(d)(5) requires that an applicant for adjustment of status under section 245(m) of the Act submit copies of a valid passport held during his period of U nonimmigrant status, or a valid explanation as to why he cannot submit copies of a passport. The applicant submitted a statement below, dated April 24, 2013, in which he claimed that he had lost his passport. The director found this explanation to be insufficient and noted that the applicant did not submit additional evidence to meet this requirement in response to the RFE. However, the applicant later submitted a supplemental response to the RFE, dated March 18, 2014, in which he stated that he had made several trips to the Mexican consulate in ██████ Idaho in an effort to obtain a Mexican passport but was unsuccessful. He explained that the Mexican consulate will not issue a passport for him in his current, legal name because he was adopted by a U.S. citizen, nor will it issue a passport in his birth name because it is no longer his legal name and he lacks identity documents in that name. The director does not appear to have considered this explanation, as her decision mentions only the

¹ The applicant claims that he previously entered the United States in June 1988 with his adoptive family. He departed the United States on July 2, 2004 under a voluntary departure order issued by an Immigration Judge on March 4, 2004.

applicant's statement that he lost his passport. We find that the applicant has provided a valid explanation regarding his inability to submit a passport. Additionally, the record does not contain evidence that the applicant departed the United States since receiving U nonimmigrant status on May 12, 2009, such that a record of departures and arrivals in a passport would be necessary to establish his continuous physical presence as required by the regulation at 8 C.F.R. § 245.24(b)(3). Therefore, the applicant has met the requirement at 8 C.F.R. § 245.24(d). However, he has not demonstrated that his adjustment of status would be justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

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." *Matter of Jean*, 23 I&N Dec. 373, 383 (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).

The record demonstrates that the applicant's history of arrests and convictions is as follows:

- On [REDACTED] 2000, he was arrested for unauthorized use of a motor vehicle and carrying a concealed weapon. He was convicted of carrying a concealed weapon/possession of a knife in violation of Or. Rev. Stat. Ann. § 166.240.
- On [REDACTED] 2000, he was arrested for possession of methamphetamine and marijuana. He was convicted of possession of marijuana in violation of Or. Rev. Stat. Ann. § 475.992. Adjudication was withheld for the possession of methamphetamine charge.
- On [REDACTED] 2000, he was arrested for possession of liquor by a minor.
- On [REDACTED] 2001, he was arrested for violation of probation.
- On [REDACTED] 2001, he was arrested for tampering with evidence, resisting arrest, and assault on a public safety officer.
- On [REDACTED], 2001, he was arrested for first and second degree theft and unlawful entry into a motor vehicle. He was convicted of two counts of second degree theft.

- On [REDACTED], 2001, he was arrested for possession of a controlled substance, first and second degree theft, and unlawful entry into a motor vehicle.
- On [REDACTED] 2001, he was arrested for failure to appear and carrying a concealed knife.
- On [REDACTED] 2002, his probation was revoked.
- On [REDACTED] 2003, he was arrested for criminal trespass and second degree theft.
- On [REDACTED] 2004, he was arrested for possession of marijuana.
- On [REDACTED] 2004, he was arrested for possession of marijuana.
- On [REDACTED] 2007, he was arrested for reckless driving. He was convicted of criminal mischief.
- On [REDACTED], 2007, he was arrested for criminal trespass. The charge was dismissed.
- On [REDACTED] 2008, he pled guilty to unlawful use of a weapon against another in violation of Or. Rev. Stat. Ann. § 166.220(1)(a).
- On [REDACTED] 2009, he was arrested for violating a restraining order that had been issued against him in protection of his now fiancée, [REDACTED].
- On [REDACTED] 2009, he pled guilty to criminal mischief in the second degree in violation of Or. Rev. Stat. Ann. § 164.354 and disorderly conduct in the second degree in violation of Or. Rev. Stat. Ann. § 166.025.
- On [REDACTED] 2009, he was arrested for violating a restraining order that had been issued against him in protection of [REDACTED]. He was convicted of contempt of court.
- On [REDACTED] 2009, the police completed an incident report regarding an allegation that the applicant violated a restraining order that had been issued against him in protection of [REDACTED].
- On [REDACTED] 2011, he was found to have violated the terms of his probation related to his conviction for unlawful use of a weapon against another. He was sentenced to 60 days in prison with credit for time served and 24 months post-prison supervision.
- On [REDACTED] 2011, he was arrested for violating probation.
- On [REDACTED] 2011, he was arrested for violating probation.
- On [REDACTED] 2012, he was arrested for violating probation based on a conviction for possession of a controlled substance – less than one ounce of marijuana.
- On [REDACTED] 2012, he was arrested for violating parole.
- On [REDACTED] 2012, he was arrested for violating parole.
- On [REDACTED] 2014, he was arrested for violation of a restraining order.
- On [REDACTED] 2014, he was arrested and charged with violating a restraining order, second degree kidnapping, harassment, menacing, domestic abuse, second degree criminal mischief, and second degree disorderly conduct. He was convicted of menacing, second degree criminal mischief, and harassment. The other charges were dismissed.

The applicant states in his appeal brief that the director erred in denying his application on discretionary grounds. The applicant contends that he has taken responsibility for his mistakes and “made steady progress in his own rehabilitation despite some setbacks.” He also states that he is a good father to his two young U.S. citizen daughters and that they will suffer hardship if he must return to Mexico. Additionally, he alleges that the director failed to consider his adjustment of status application in the context of the prolonged sexual abuse the applicant suffered at the hands of his

adoptive father. He states that the trauma caused by that abuse affected his psychological health and that his actions should be viewed in that context. He also asserts that all of his criminal actions since he received U nonimmigrant status have been misdemeanors and that those matters have been resolved. Finally, he contends that the U.S. government, including the immigration service, failed to “have meaningful checks in place” that could have prevented the applicant’s being trafficked into the United States and abused by his adoptive family. He alleges that the failure of Federal authorities to protect him and other children against predatory adults in the United States is at least partially responsible for the applicant’s “critical formative years being severely distorted by years of sexual abuse by his adoptive U.S. citizen father and others” and that the applicant therefore should not be required to bear full responsibility for his situation.

In his affidavit submitted on appeal, the applicant states that he has no memories from before age six, when he was adopted by a family in the United States and taken from Mexico to the United States. He states that 15 years after his adoption, he received a letter from his biological mother and reunited with her while he was in prison. The applicant indicates that he has since reconnected with his biological family and has also created a family of his own. He notes that he and his fiancée have two young daughters and that his relationship with them is the most important thing in his life.

The applicant’s fiancée, [REDACTED] states on appeal that she has known the applicant for over eight years and that he is the father of her two daughters. She states that the applicant had a very difficult childhood because his adoptive father sexually abused him. Her understanding is that the applicant’s adoptive family failed to complete the paperwork to finalize his adoption and obtain legal immigration status for him in the United States, instead smuggling him across the border. Ms. [REDACTED] believes that the fact that the applicant has not received mental health treatment for the abuse he suffered, although not an excuse for his criminal history, may help explain some of his behavior. She notes that although she previously had a restraining order against the applicant for hitting her, he later completed a batterer’s intervention program and they resumed their relationship. Ms. [REDACTED] claims that the applicant is a very good father and a good person and that he supports her and their daughters. She feels that she, the applicant, and their daughters would be devastated if the applicant had to return to Mexico. She states that the applicant has changed since his probation ended on October 11, 2013, and that he deserves to be a U.S. citizen. She does not address the applicant’s 2014 arrest for violation of a restraining order or his 2014 conviction for multiple offenses.

The record on appeal also contains letters of support from three of the applicant’s friends, a neighbor, and a former employer. His friend [REDACTED] who has known the applicant for 20 years, states that the applicant is a caring person and devoted father who provides essential support for his children. He believes the applicant is an American because he has been in the United States since he was a young child and does not know anything about Mexico. Mr. [REDACTED] also states that the applicant’s criminal history can be attributed to his having grown up in a small town where there was “no outlet for young people,” not to being a criminal or a person of bad moral character. Another friend, [REDACTED] states that he has known the applicant for 10 years and believes he is an honest, dependable, good friend and coworker. Mr. [REDACTED] believes that the applicant deserves to be a U.S. citizen because he has lived his entire life in the United States, has a family here, and is trying

to do the right thing. A third friend, [REDACTED] who has known the applicant for 19 years, writes that the applicant is a good friend and father and a smart and helpful person. Mr. [REDACTED] contends that the applicant deserves to remain in the United States after living here his whole life. He states that the applicant's daughters would be left fatherless if the applicant had to leave the United States. A neighbor, [REDACTED] indicates that he has known the applicant for a year and believes he is "crime free and a devoted father and friend." Mr. [REDACTED] believes that the applicant deserves to remain in the United States. The applicant's former employer, [REDACTED] claims that the applicant was "above average" in meeting his work responsibilities and is sincere in his desire to be a U.S. citizen.

Also submitted on appeal is a letter from the applicant's adoptive father, [REDACTED]. He states that he and his second wife adopted the applicant from Mexico in [REDACTED] 1988. He admits to having served time in prison for molesting the applicant and another boy. Mr. [REDACTED] states that although he caused significant harm to the applicant, the applicant has forgiven him, which is a testament to the applicant's character. Mr. [REDACTED] also states that the applicant has been the victim of difficult circumstances and although he made mistakes, he also engaged in certain behaviors, such as using marijuana, "to ease his pain." Mr. [REDACTED] indicates that the applicant is a hard worker and caring father and has a lot to offer the United States. Mr. [REDACTED] takes responsibility for failing to file the paperwork for the applicant's U.S. citizenship when the applicant was a child, and states that the applicant has "much to offer" to the United States if he is granted status.

In an Individual Sexual Abuse Victim's Assessment, conducted on February 10, 2006, and submitted prior to this appeal, [REDACTED] Licensed Clinical Social Worker, indicates that the applicant's behavior has been consistent with that typically exhibited by boys who are sexually abused. Ms. [REDACTED] states that the fear, guilt, confusion, and humiliation caused by sexual abuse can "hinder many aspects of social and psychological development" in victims and can lead to difficulty in school and relationships, medical problems, psychological problems such as depression, rebellion, or hostility, and use of drugs and alcohol to numb certain feelings. She asserts that the applicant is at high risk of revictimization if he returns to Mexico because he has no self-protection skills and lacks community and family support there. Ms. [REDACTED] recommends that the applicant receive mental health and substance abuse treatment and that he receive the necessary support to build a healthy lifestyle and obtain an education.

The applicant has not met his burden of establishing that he merits adjustment of status in the exercise of discretion. The evidence does demonstrate that the applicant was separated from his biological family and adopted in Mexico as a young child and was then brought to the United States. Additionally, the record shows that the applicant was the victim of severe and ongoing sexual abuse beginning soon thereafter and lasting throughout his childhood, and that he has not received necessary support to deal with that trauma. We find this context to be a strong positive equity in this case. There are also several other factors in the applicant's favor, including his residence in this country since age six, his close ties to his U.S. citizen children and fiancée, the fact that he is the financial provider for his family, the support he has from friends and other members of his community, his completion of a batterer's intervention program, his efforts to move forward after the

abuse he suffered, and the fact that he successfully completed his probation. Additionally, the applicant has submitted several affidavits in connection with his petition for U nonimmigrant status, application for adjustment of status, and subsequent appeal in which he takes responsibility for his mistakes that led to his arrests and convictions and expresses remorse.

However, the applicant's extensive criminal history, which includes a conviction less than one year ago, outweighs the favorable factors in this case. By the time his petition for U nonimmigrant status was approved on May 12, 2009, the applicant had been arrested at least 14 times and convicted of carrying a concealed weapon, possession of marijuana, theft, criminal mischief, and unlawful use of a weapon against another. Since receiving U nonimmigrant status, he has been arrested at least eight more times, including for violations of a restraining order issued for the protection of his fiancée, Ms. [REDACTED] and numerous violations of probation and parole. Since 2009 he has been convicted of criminal mischief, disorderly conduct, menacing, harassment, and contempt of court. His two most recent arrests – on [REDACTED] and [REDACTED] 2014 – occurred after he filed the instant appeal, and the latter resulted in conviction on three charges. Although the applicant has expressed remorse for his criminal activity, he has continued to engage in behavior that has led to arrests and convictions and has therefore failed to show that he is rehabilitated. Contrary to the applicant's contention in his appeal brief that his criminal history since his U nonimmigrant status was granted involves only "minor infractions," the evidence demonstrates that his recent criminal activity forms part of a serious pattern of ongoing criminal activity between 2000 and 2014. Several of the applicant's arrests and convictions have involved violence, including unlawful use of a weapon against another and violations of restraining orders. Finally, although the applicant asserts that he should not bear full responsibility for his actions because the U.S. government failed to implement proper procedures to protect him from abuse, he does not point to any specific facts or provide any legal argument to establish that U.S. policies caused or should excuse the applicant's consistent criminal activity over a period of 14 years.

After considering the evidence in its totality, we find that the applicant's criminal history outweighs the favorable factors in his case. Therefore, the applicant has not demonstrated that his adjustment of status would be justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

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; *Matter of Otiende*, 26 I&N Dec. 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 is denied.