



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

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

MATTER OF J-M-F-M-

DATE: NOV. 10, 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-3 nonimmigrant status, seeks to adjust his status. *See* Immigration and Nationality Act (the Act) § 245(m)(1); 8 U.S.C. § 1255(m)(1). The Director, Vermont Service Center, denied the application. The matter is now before us on appeal. The appeal will be sustained.

I. 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

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(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:

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(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 [Secretary], 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 May 26, 2010, the Director granted U-3 nonimmigrant status to the Applicant based upon an approved Form I-918 Supplement A, Petition for Qualifying Family Member of a U-1 Recipient, that his mother filed on his behalf. The Applicant's U-3 status was valid from August 21, 2006, until April 18, 2011. The Applicant filed the instant Form I-485, Application to Register Permanent Resident or Adjust Status, on April 6, 2011, and the Director denied the Applicant's I-485 finding that the adverse factors in the Applicant's case outweighed the positive factors, and that he did not establish that his continued presence in the United States is in the public interest. The Applicant timely appealed the denial of his Form I-485. On appeal, the Applicant claims that it was an abuse of discretion to deny his application when only two of his convictions were not previously waived by the approval of his Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, and that the positive factors in this case outweigh the adverse factors such that discretion should be exercised in his favor. He also submits additional evidence.

(b)(6)

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### III. ANALYSIS

We conduct appellate review on a *de novo* basis. Based on the evidence in the record, the Applicant has established that he merits a favorable exercise of discretion on his Form I-485.

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 [applicant'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 shows that on [REDACTED], 2008, the Applicant stipulated to facts sufficient to enter a finding of guilt of possession of 40 grams or less of marihuana and drug loitering.<sup>1</sup> The case was dismissed after the Applicant complied with the deferred sentence. On [REDACTED] 2009, a charge of reckless endangerment was dismissed with prejudice after the Applicant complied with the deferred sentence.<sup>2</sup> On [REDACTED] 2010, the Applicant pled guilty to possession of 40 grams or less of marihuana, driving without insurance, and use/delivery of drug paraphernalia.<sup>3</sup> On the same day, he also pled guilty to driving with a suspended license in the 3rd degree.<sup>4</sup> On [REDACTED] 2011, the Applicant was convicted of theft and for obstructing a law enforcement officer.<sup>5</sup>

On appeal, the Applicant acknowledges that he has had some criminal problems but asserts that he has worked hard to turn his life around in the past years and that he and his family would suffer exceptional and extremely unusual hardship if his Form I-485 is denied. In his affidavits, the

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<sup>1</sup> Case number: [REDACTED]

<sup>2</sup> Case number: [REDACTED]

<sup>3</sup> Case number: [REDACTED]

<sup>4</sup> Case number: [REDACTED]

<sup>5</sup> Case number: [REDACTED]

(b)(6)

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Applicant states that when he found out about his lack of legal status in the United States, he lost hope and made mistakes. Since his last arrest, the Applicant completed his court-ordered community service and continues to volunteer at the [REDACTED] and with his church. The Applicant also started a cleaning business with his mother in which he runs the operations, including making schedules and accounting. He is currently registered in community college, and hopes to obtain a bachelor's degree and join the Air Force. The Applicant also explains that his siblings and mother rely on him, and that he wants an opportunity to continue to help and set a good example for his younger siblings. The Applicant also notes that he fears returning to Honduras, and provided evidence that Honduras is currently a very dangerous place to live, and that he would have very few opportunities if he were to return there.

The Applicant also submitted various letters of support from family, friends, former teachers, pastors, deacons, and his landlord that all describe how the Applicant is an asset to the community and would make positive contributions to the United States if he is allowed to adjust his status. His family members, in particular, describe how difficult their lives would be without the Applicant. The Applicant's mother describes everything her son does for her and their family, and notes that she brought the Applicant to the United States when he was [REDACTED] old and that he is completely unfamiliar with Honduras. On appeal, the Applicant also submits a psychological evaluation prepared by [REDACTED], a licensed clinical social worker, who diagnosed the Applicant as suffering from posttraumatic stress disorder and major depressive disorder.

The overall evidence establishes that the Applicant's adjustment to lawful permanent residency is warranted as a matter of discretion. The favorable and mitigating factors in the present case are the Applicant's long residence and family and community ties in the United States, his volunteer work, his employment, his enrollment in community college, and his rehabilitation and completion of community service. The unfavorable factors are the Applicant's convictions. When viewed in their totality, the positive factors in the present case outweigh the adverse factors. Accordingly, we withdraw the Director's decision and sustain the appeal, as the Applicant merits a favorable exercise of discretion.

#### IV. 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 been met as to the Applicant's eligibility to adjust status under section 245(m)(1) of the Act.

**ORDER:** The appeal is sustained.

Cite as *Matter of J-M-F-M-*, ID# 14385 (AAO Nov. 10, 2015)