



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

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

MATTER OF B-R-O-B-

DATE: OCT. 20, 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* section 245(m) of the Immigration and Nationality Act (the Act), 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.

The Director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, because the Applicant did not demonstrate that the positive factors in his case outweighed his criminal history, and therefore he did not establish eligibility for adjustment to lawful permanent residence as a matter of discretion. On appeal, the Applicant submits a brief and additional evidence.

**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. RELEVANT FACTS AND PROCEDURAL HISTORY

On February 18, 2010, the Director granted U-3 nonimmigrant status to the Applicant based on an approved Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient, that

the Applicant's mother filed on his behalf. The Applicant's U-3 nonimmigrant status was valid until February 17, 2014. The Applicant filed the Form I-485 on October 15, 2013. The Director issued a request for evidence (RFE) of the dispositions of the Applicant's arrests. The Applicant responded with a letter from counsel and additional evidence. The Director then issued a notice of intent to deny (NOID) based on a finding that the Applicant's criminal history outweighed the favorable factors in his case. The Applicant responded to the NOID with documentation regarding his juvenile court proceedings, a medical record, and letters from the Applicant, his mother, and his sister. The Director found the evidence insufficient to establish that the Applicant was eligible for adjustment of status as a matter of discretion.

### III. 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 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). 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).

In *Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the Board of Immigration Appeals (Board) stated, "We 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 Board added, "We 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

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“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. *Wallace v. Gonzales*, 463 F.3d 135 (2d Cir. 2006); *see* 8 C.F.R. § 245.24(d)(11).

The Applicant’s history of arrests and juvenile delinquency proceedings is as follows:

- On [REDACTED] 2011, at the age of [REDACTED] the Applicant was arrested for possession of marijuana on school grounds in violation of Cal. Health and Safety Code § 11357(e). The charge was dismissed.
- On [REDACTED] 2012, at the age of [REDACTED], the Applicant was again arrested for possession of marijuana on school grounds in violation of Cal. Health and Safety Code § 11357(e). The charge was dismissed.
- On [REDACTED] 2013, at the age of [REDACTED], the Applicant was arrested for attempt to commit second degree burglary, promoting criminal street gang activity, conspiracy to commit a crime, and obstructing a police officer. The Applicant was adjudicated delinquent based on his admissions to the charges of attempting to commit burglary in violation of Cal. Penal Code § 644/459 and obstructing a police officer in violation of Cal. Penal Code § 148(a)(1).

In his brief on appeal, the Applicant contends that the Director erred in placing “too much weight on one delinquent act” that occurred when the Applicant was [REDACTED] years old, while giving too little weight to the favorable factors in the Applicant’s case. The Applicant also provides additional evidence on appeal to demonstrate that, since the Director’s decision, the Applicant graduated from probation camp, his delinquency proceedings were dismissed, and he obtained certificates of employability in various skills. The Applicant asserts that his rehabilitation and close family ties in the United States support a finding that he merits adjustment of status as a matter of discretion.

The records of the juvenile delinquency proceedings against the Applicant indicated that he was detained in Juvenile Hall based on a finding that remaining in his home “would be contrary to the welfare of the minor [Applicant].” The record of a hearing on [REDACTED] 2013, listed the reasons for this finding as “Behavioral Issues,” “Substance Abuse Issues,” “Gang Issues,” “Detention necessary for the protection of the minor,” “Detention necessary for protection of person or property of another,” and “severity of crime.” Records from a hearing on [REDACTED], 2013, showed that the Applicant was later released to the custody of his mother on probation, with instructions to avoid certain individuals. Later records, from a hearing on [REDACTED] 2013, indicated that the Applicant was ordered to participate in substance abuse counseling and to avoid certain individuals, places, events, and gang-related symbols and activities. According to records from a hearing on [REDACTED] 2014,

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the Applicant was again detained in Juvenile Hall based on "Supervision Issues," "Behavioral Issues," and "Substance Abuse Issues" at home. Records from a hearing on [REDACTED], 2014, stated that the Applicant was retained as a ward of the court but had an "excellent rep[or]t from camp."

The Applicant submits further records on appeal which demonstrate that, on [REDACTED], 2015, the juvenile court found that the Applicant "successfully graduated camp . . . w[ith] various certificates." The court therefore ordered "[a]ll delinquency proceedings dismissed." The court's findings were based on a Probation Camp Graduation Report which states that the Applicant was admitted to the residential camp on [REDACTED] 2014, and that he "matured a great deal," demonstrated "patience and discipline," and developed skills in "sober decision making [and] conflict management within the family . . . ." The Report states that the Applicant had a "setback while on Aftercare (smoking spice)," but was able to address the issue and move forward. The Report further states that the Applicant attended individual and family counseling sessions, spent quality time with his family, worked while taking General Educational Development (GED) preparation classes, earned awards at local fairs for his electrical projects, became certified in CPR and First Aid, and earned a forklift operator's license. The Report states that the Applicant had "a great amount of success and it is the belief of th[e] caseworker that he will continue to move in that direction." The Applicant also submits on appeal copies of Certificates of Employability Skills in carpentry, culinary arts, welding, and residential wiring.

The Applicant previously submitted, in response to the NOID, a statement in which he expressed remorse for his past mistakes and said he learned from them. He indicated that he was working harder at school, setting goals for himself, surrounding himself with better people, and attempting to clear his record. The Applicant also claimed that he was taking depression medication and felt that returning to Mexico would worsen his depression. He stated that his mother always supported him, and that being separated from her would be difficult for him. In another statement, dated September 13, 2013, the Applicant discussed his arrest of [REDACTED] 2013. He stated that he and some friends were parked outside a house in a truck when a woman in the house called the police. According to the Applicant, his friend drove away and would not comply with the Applicant's request to stop. The Applicant claimed that the truck eventually stopped and he and his friends were arrested. He stated that he was sentenced to 15 days in jail, one week of house arrest, and one year of probation, and was referred to the Drug Abuse Alternatives Center. He indicated that he regretted his mistakes and poor choices, and that he "realized that being a careless person has bad consequences." The Applicant apologized for his mistakes and requested a second chance, and indicated that he had plans to obtain an education and work in the future. In an additional statement, also dated September 13, 2013, the Applicant again expressed remorse for his mistakes and poor judgment.

As additional support for his application, the Applicant supplied a letter from his mother, who acknowledged the Applicant's serious mistakes but stated that he "is struggling very hard to repair the problem, and he is succeeding." The Applicant's mother asserted that the Applicant had "a painful childhood" and has depression, and that returning to Mexico would be very difficult for him. She attributed the Applicant's actions to "his young, immature and confused mind." She further stated that it would be very difficult for her and the Applicant to be separated. The Applicant's sister

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similarly stated, in a letter submitted in response to the NOID, that she had a very close relationship with the Applicant and that it would be difficult for the family to be separated. She reiterated that she and the Applicant had a difficult childhood and that the Applicant was suffering from depression. She acknowledged that the Applicant made mistakes, but claimed that he learned from them and that returning to Mexico would be very difficult for him and his family.

The Applicant also submitted with his Form I-485 a medical record indicating that he was prescribed depression medication, school records, a 2012 tax return, a pay stub, and a letter from the [REDACTED] Probation Camp which stated that he was “progressing through the program at a standard rate.”

The negative factors in the Applicant’s case are his three arrests as a juvenile, one of which resulted in a delinquency determination and placement in Juvenile Hall and probation camp. All of his arrests occurred after he was granted U-3 nonimmigrant status. Although the charges for both of the Applicant’s arrests for possession of marijuana were dismissed, and we give them little weight, the records the Applicant submitted do indicate that he was suspected of possessing marijuana on school grounds. Additionally, although the Applicant’s juvenile delinquency determination for attempted burglary and obstruction of a police officer does not qualify as a crime, it is relevant to our discretionary determination. *Wallace v. Gonzales*, 463 F.3d 135 (2d Cir. 2006); *see also* 8 C.F.R. § 245.24(d)(11). Juvenile court records indicate that the Applicant’s offense was considered serious, and that he was placed in juvenile detention for behavioral, gang-related, and substance abuse issues. Additionally, following his release to the custody of his mother, he was again placed in Juvenile Hall in 2014 due to “Supervision Issues,” “Behavioral Issues,” and “Substance Abuse Issues.” The Applicant’s arrest on April 30, 2013 occurred only five months prior to his filing of the Form I-485 and he remained in delinquency proceedings until [REDACTED] 2015. Furthermore, the Probation Camp Graduation Report indicates that the Applicant had a “setback” related to smoking spice during Aftercare following his departure from residential probation camp. The seriousness of the Applicant’s conduct, as well as the recency of his arrest, juvenile delinquency determination, participation in probation camp, and smoking spice, do not support a finding that he has been fully rehabilitated.

Favorable factors in this case include the Applicant’s close family ties in the United States and his residence in the United States since 2007, when he was [REDACTED] years old. Additionally, the Applicant expressed remorse for his actions and took responsibility for his mistakes. He successfully completed probation, has worked toward obtaining an education, and has been employed. Furthermore, the Applicant was [REDACTED] years old at the time of his arrest and juvenile delinquency adjudication. However, when viewed in their totality, the positive factors in this case do not outweigh the seriousness of the Applicant’s history of juvenile delinquency. Accordingly, the Applicant has not demonstrated that he is rehabilitated and 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. § 214.14(c)(4); *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.

Cite as *Matter of B-R-O-B-*, ID# 14116 (AAO Oct. 20, 2015)