



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

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

MATTER OF V-S-H-

DATE: AUG. 31, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Applicant seeks to become a lawful permanent resident based on his "U" nonimmigrant status. *See* Immigration and Nationality Act (the Act) section 245(m), 8 U.S.C. § 1255(m). The U classification affords nonimmigrant status to crime victims, who assist authorities investigating or prosecuting the criminal activity, and their qualifying family members. The U nonimmigrant may later apply for lawful permanent residency.

The Director, Vermont Service Center, denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The Director concluded that although the Applicant expressed remorse for acts for which he was adjudicated delinquent as a juvenile, the recency of the acts prevented him from establishing his rehabilitation. Therefore, the Director found that the record did not contain sufficient evidence that the Applicant merited adjustment of status in the exercise of discretion.

The matter is now before us on appeal. On appeal, the Applicant submits a personal statement and additional evidence. He asserts that the evidence demonstrates that he has been rehabilitated.

Upon *de novo* review, we will dismiss the appeal.

I. 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 –

(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:

.....

(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.

II. ANALYSIS

The Applicant filed the instant U adjustment application on March 10, 2015. Upon a full review of the record, as supplemented on appeal, the Applicant has not overcome the Director's ground for denial.

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). 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.* The applicant may 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 *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).

An act of juvenile delinquency is not a criminal conviction on which to base removal or bar relief from removal. *Matter of Miguel Devison-Charles*, 22 I&N Dec. 1362, 1365 (BIA 2000); see also

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Matter of De La Nues, 18 I&N Dec. 140 (BIA 1981); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). However, 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 also* 8 C.F.R. § 245.24(d)(11).

On [REDACTED] 2014, the Applicant was arrested and charged with:

- Simple assault in violation of Pennsylvania Consolidated Statutes (Pa. Cons. Stat.) § 2701(a)(1);
- Harassment in violation of Pa. Cons. Stat. § 2709(a)(1);
- Stalking in violation of Pa. Cons. Stat. § 2709.1(a)(1); and
- Disorderly conduct in violation of Pa. Cons. Stat. § 5503(a)(1).

On [REDACTED] 2014, the Applicant was adjudicated delinquent in relation to the simple assault charge. He was also adjudicated delinquent for indirect criminal contempt in violation of Pa. Cons. Stat. § 6113(a). The remaining charges were dismissed. The Juvenile Court Judge placed the Applicant on probation and ordered him to pay restitution to the victim in the amount of \$212, write an apology letter to the victim, obey a curfew, and attend psychological counseling.

A. Adverse Factors

The adverse factors in this case include the Applicant's arrests and his juvenile delinquency adjudication for simple assault and indirect criminal contempt. This delinquency adjudication occurred on [REDACTED] 2014, only [REDACTED] months before he filed his U adjustment application. We agree with the Director that the recency of these incidents weighs negatively against a finding that the Applicant is rehabilitated.

Additionally, the Applicant has not submitted sufficient evidence of his rehabilitation or established that he has taken full responsibility for his actions. In his November 9, 2014, statement submitted in support of his U adjustment application, the Applicant did not mention his arrests or juvenile delinquency adjudication or discuss any efforts he was taking to become rehabilitated. Similarly, the Applicant's family members and friends did not discuss the Applicant's juvenile delinquency or any mitigating factors in their letters.

The record contains a second statement from the Applicant, which is undated but appears to have been submitted in response to a request for evidence from the Director. In this undated statement, the Applicant expressed remorse for the actions that led to his arrest, but also stated, "I got arrested because I hit my exgirlfriend [*sic*] by accident . . ." The Applicant's statement that the incident was an accident conflicts with the Affidavit of Probable Cause accompanying the Written Allegation against him, which indicates that the Applicant approached his ex-girlfriend in a stairwell at school and "punched her in the face with a closed fist." The Affidavit of Probable Cause further indicates that the victim suffered a broken and bleeding nose as a result of being punched. In proceedings before the Juvenile Court, the Applicant admitted to the charge of simple assault, which was

(b)(6)

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described in the Written Allegation as “attempt[ing] to cause or intentionally, knowingly or recklessly caus[ing] bodily injury to” the victim. The Applicant’s claim that he accidentally hit his ex-girlfriend does not indicate that the Applicant has taken responsibility for his behavior.

On appeal, the Applicant submits an additional statement, in which he states that he is in counseling and is working to rehabilitate himself. He also states that he is very sorry for his actions, and he requests permission to remain in the United States with his family. However, the Applicant does not specifically address the behavior that led to his arrest and juvenile delinquency adjudication, nor does he describe any specific actions he is taking to become rehabilitated.

B. Favorable Factors

Favorable factors in this case include the Applicant’s close family ties in the United States, including with his father and brother, who are lawful permanent residents. The Applicant has resided in the United States since February 15, 2012, when he was [redacted] years old. His arrival in the United States reunited him with his father, from whom he had been separated for 10 years, and the Applicant has expressed how important this reunion has been to him. He has also explained how accustomed he has become to the lifestyle and educational system of the United States, and that it would be very difficult for him to return to Mexico. The Applicant also has the support of his family members and friends. His father, brother, girlfriend, and friend submitted letters explaining his close ties to the United States, his dedication to his schoolwork and professional goals despite difficulty learning English and adjusting to life in the United States, and his good moral character.

Additionally, the Applicant’s educational records indicate that he has done well at school. Two of his teachers submitted letters indicating that the Applicant is a respectful and attentive student. The Applicant’s school counselor also indicated in a letter that the Applicant is respectful, cooperative, and hardworking. The record also contains copies of two “Student of the Month” certificates the Applicant earned for his academic success.

The Applicant has also attended court-ordered counseling. [redacted] Licensed Professional Counselor, indicated in a February 2, 2015, letter that the Applicant had been attending weekly appointments with a counselor and monthly appointments with a psychiatrist since August 22, 2014. [redacted] stated that the Applicant was receiving treatment for Adjustment Disorder with Depressed Mood and was learning to “manage his mood, symptoms, and avoid any destructive behaviors.” According to [redacted] the Applicant consistently attended his appointments and expressed several personal interests and goals. In a letter dated February 18, 2016, and submitted on appeal, another counselor, [redacted] reports that the Applicant has continued to receive therapy for depression and has worked to control his emotions and impulses and plan for the future.

C. Weighing of the Factors as an Exercise of Discretion

The Applicant bears the burden of showing that discretion should be exercised in his favor in these proceedings. 8 C.F.R. § 245.24(d)(11). When viewed in their totality, the positive factors in this

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case do not outweigh the recency of the Applicant's history of juvenile delinquency or the lack of evidence regarding his rehabilitation. 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. Section 245(m)(1) of the Act.

III. CONCLUSION

In these proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of V-S-H-*, ID# 17895 (AAO Aug. 31, 2016)