



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

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

MATTER OF M-M-A-P-

DATE: AUG. 31, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant seeks to become a lawful permanent resident based on her "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, granted U-3 nonimmigrant status to the Applicant on July 9, 2010, based upon an approved Form I-918A, Petition for Qualifying Member of U-1 Recipient (U derivative petition). The Applicant subsequently filed a Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The Director denied the application as a matter of discretion. The Director reviewed the Applicant's recent conviction for driving under the extreme influence of intoxicating liquor (DUI), lack of candor on her U adjustment application, pattern of repeated arrests, and lack of rehabilitation, and concluded that these negative factors were not outweighed by the positive factors, including the length of the Applicant's residence and close family ties in the United States, graduation from high school, employment, and payment of income taxes.

The Applicant filed an appeal, and requested that we exercise favorable discretion. We reviewed as negative equities the Applicant's multiple arrests, recent DUI conviction, and partial omission of arrests on the U adjustment application. We viewed positively the Applicant's residence in the United States since childhood, close relationship with her mother and brother, both lawful permanent residents of the United States, employment, payment of taxes, high school diploma, and attempts to overcome the effects of a traumatic life, including her history of substance abuse. We concluded that the Applicant did not establish that her adjustment of status was warranted for humanitarian reasons, for family unity, or was otherwise in the public interest.

The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Applicant submits a brief and additional evidence. The Applicant claims that her self-destructive tendencies are caused by post-traumatic stress disorder (PTSD), and have resulted in her criminal arrests, the DUI conviction, and lack of full disclosure on her U adjustment application. She asserts

that since she has begun receiving treatment for her PTSD, she is not at risk for another criminal arrest. She requests a favorable exercise of discretion.

Upon review, we will deny the motions.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). An applicant may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

On motion, the Applicant does not overcome our decision on appeal, incorporated here by reference, that her adjustment of status is not warranted as a matter of discretion. The motions will be denied for the following reasons.

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, 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).

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A. Adverse Factors

The Applicant's disregard for the law, as shown in her multiple arrests, are serious adverse factors weighing against approval of the U adjustment application. The Applicant's arrest record includes two counts of assault and one count of criminal damage when she was [redacted] years old, an arrest for assault and disorderly conduct in 2012, an arrest for possession or use of drug paraphernalia or narcotic drugs (cocaine) in 2014, and an arrest and conviction for driving under the influence (DUI) in 2014. The record shows that, except for the juvenile arrests, all of these incidents occurred during the period when the Applicant was in U nonimmigrant status. The recent incidents weigh more heavily as negative factors because the Applicant was in U nonimmigrant status, and she has not shown full rehabilitation from her criminal behavior. In addition, the Applicant's choice to hide her 2014 arrest for drug possession from USCIS when she filed her U adjustment application, and her behavior when she was arrested for this offense, are also serious adverse factors.

Although the Applicant has shown that no charges were filed against her for possession of drug paraphernalia and drugs, she did not report this arrest on her U adjustment application and on motion does not explain or show remorse for this omission. She does not provide an explanation for the difference between her testimony that she was asleep in the back seat of a car and woke up in jail, and the police incident report, which described the Applicant as "highly intoxicated . . . screaming and yelling obscenities and making threats of killing me . . ." She asserts, through counsel, that she was in a blackout during this arrest, but does not submit any personal statement on motion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Nor does she explain why, after waking up in prison, she does not recall being arrested. She does not provide a reasonable explanation and does not take responsibility for intentionally omitting this arrest on her U adjustment application.

The Applicant has not shown that she has completed all the terms of her DUI sentencing ordered on [redacted] 2015. On appeal, the Applicant submitted a copy of proof of attendance at a DUI Victim Impact Panel on [redacted] 2015, and a certificate of completion of Level I – 36 hour alcohol and drug treatment program at [redacted]. The record does not contain proof that the Applicant has completed the remaining conditions of her sentence, including a sentence review hearing one year from the date of installation of the Ignition Interlock Device (IID) to show proof of 12 months' IID compliance, 30 consecutive days in jail, and payment of fines, fees, and assessments. Further, she has not established that the sentencing court has terminated the DUI criminal case as completed.

B. Favorable Factors

On motion, the Applicant submits a letter from [redacted] PsyD, LPC, and informational materials about PTSD. [redacted] states that she has provided ongoing counseling to the Applicant since [redacted] 2015 for trauma and depression. [redacted] recounts the Applicant's childhood trauma history, as a witness of domestic violence in her home, as a victim of abuse by her father, and as a victim of continuous sexual abuse by a male cousin from the ages of 7-10 and 11-13. [redacted] states:

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Once the sexual abuse stopped, [the Applicant] was overwhelmed with symptoms of Posttraumatic Stress Disorder (PTSD) including flashbacks, persistent shame, hypervigilance, angry outbursts, and self-destructive behavior. . . . her fighting, unsafe sexual activity, and substance abuse was a pattern of reckless behavior consistent with the diagnostic criteria for PTSD. As [the Applicant] did not have access to treatment this unhealthy pattern continued into adulthood and resulted in negative consequences, including her arrests.

█ indicates that she has diagnosed the Applicant with major depressive disorder and PTSD, and that since the Applicant has been in trauma therapy, her coping skills have improved, she is no longer engaging in self-destructive behaviors, and has a good prognosis if she continues in therapy.

C. Weighing the Factors as an Exercise of Discretion

The favorable and mitigating factors in the present case are the Applicant's long residence and close family ties in the United States, employment, payment of taxes, high school diploma, partial completion of parts of the court ordered sentencing, the support of family members, friends, and associates, her continuing efforts to be healed and fully rehabilitated, and her improved behavior as reported by █. We acknowledge █ statement that the Applicant has improved, and her opinion that the Applicant will not be arrested again. Nevertheless, the fact that the Applicant has not been released from criminal charges indicates that she is not fully rehabilitated from her criminal behavior. The Applicant does not submit a statement or other evidence on motion that she has completed the conditions of sentencing, or describe her continuing efforts at drug and alcohol rehabilitation since she completed the court-ordered treatment program. The record does not contain documents describing current recovery efforts, or whether or not the Applicant continues to attend AA or other support group meetings. While we have sympathy for the Applicant's traumatic life experiences, and her efforts to recover, she does not take full responsibility for her arrests and DUI conviction, and does not express remorse for her lack of truthfulness under oath on her U adjustment application.

After considering the evidence in its totality, based upon our discretion, we find that the Applicant's criminal history and lack of complete rehabilitation from her criminal past, outweigh the favorable factors in her case. Accordingly, the Applicant has not demonstrated that her adjustment of status is warranted for humanitarian reasons, for family unity, or is otherwise in the public interest.

III. CONCLUSION

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

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-M-A-P-*, ID# 17777 (AAO Aug. 31, 2016)