



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

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

MATTER OF M-P-

DATE: JAN. 8, 2016

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 dismissed.

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 --

(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 [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 7, 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 May 7, 2010, until May 6, 2014. The Applicant filed the instant Form I-485, Application to Register Permanent Resident or Adjust Status, on April 9, 2014, 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 the Director gave too much weight to the negative factors and that the positive factors in this case outweigh the adverse factors such that discretion should be exercised in his favor. He also submits a brief and additional evidence.

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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 not 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] 2004, the Applicant was arrested for vehicle theft. On [REDACTED] 2006, the Applicant was arrested for juvenile robbery. On [REDACTED] 2008, the Applicant was arrested for possession of a weapon on school grounds, and he was convicted on [REDACTED] 2008, of said offense.¹ On [REDACTED] 2008, the Applicant pled nolo contendere to theft and unlawful driving or taking of a vehicle.² On [REDACTED], 2008, the Applicant was arrested for minor in possession of alcohol and illegal entry. On [REDACTED] 2009, the Applicant was arrested for burglary, contributing to the delinquency of a minor, and minor in possession of alcohol. On [REDACTED] 2009, he was arrested for obstructing a public officer, trespass posted landed, and refused to leave, and his probation was revoked. On [REDACTED] 2009, the Applicant was convicted of driving under the influence (DUI) and causing bodily injury to another person.³ On [REDACTED], 2011, the Applicant was arrested for failure to comply with the terms of plea for his 2009 DUI conviction and his probation was revoked. In addition, in his declaration on appeal, the Applicant admits to gang involvement until approximately 2008.

¹ Case number: [REDACTED]

² Case number: [REDACTED]

³ Case number: [REDACTED]

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On appeal, the Applicant acknowledges that he has had some criminal problems but asserts that after the birth of his daughters, he no longer associated with the gang, and that since his 2009 DUI conviction, he stopped drinking alcohol and has turned his life around. In his affidavits, the Applicant states that when he arrived in the United States as a teen, his parents were not around and he associated with the wrong people in order to seek protection. The Applicant submitted evidence that in [REDACTED] 2008, he completed a gang intervention program. On [REDACTED] 2010, the Applicant also completed a [REDACTED] program, and he has completed his probation. The Applicant also submits a Form I-693, Report of Medical Examination and Vaccination Record, in which a civil surgeon indicates that the Applicant does not suffer from any physical or mental disorder associated with harmful behavior nor does he have any substance abuse/addiction. The record reflects that the Applicant is employed on a full-time basis and has paid his taxes. The Applicant also explains that his daughters rely on him for financial and emotional support, and that his mother and siblings are lawful permanent residents in the United States. The Applicant also notes that he fears returning to Peru, and no longer has any connections there.

The Applicant also submitted various letters of support from family, friends, and former and current employers that 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. The mother of his children reported that the Applicant provides financial and emotional support and caregiving. However, most of these letters do not acknowledge or discuss the Applicant's criminal background.

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 employment, his completion of an anti-gang and DUI program, and his rehabilitation and completion of probation. However, only the most compelling positive factors would justify a favorable exercise of discretion since the record shows that the Applicant has been convicted of the serious violent crimes of possession of a weapon on school grounds and driving under the influence and causing serious harm to another. *See* 8 C.F.R. § 245.24(d)(11). The unfavorable factors are the Applicant's multiple arrests, convictions, and gang involvement. We also note that many of the Applicant's arrests and convictions occurred after he graduated from the anti-gang program, and that after he completed the [REDACTED] program, he was arrested for failure to comply with his 2009 plea. In addition, other adverse factors include the Applicant's entry into the United States without inspection and unlawful presence in the United States. We find that when taken together, the adverse factors in the present case outweigh the favorable factors; therefore, we deny the Applicant's application on discretionary grounds.

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 not been met as to the Applicant's eligibility to adjust status under section 245(m)(1) of the Act and the appeal shall be dismissed.

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ORDER: The appeal is dismissed.

Cite as *Matter of M-P-*, ID# 15045 (AAO Jan. 8, 2016)