



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

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

MATTER OF J-E-G-S-

DATE: JAN. 11, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Applicant, who was previously granted U-1 nonimmigrant status, seeks to adjust his status. *See* Immigration and Nationality Act (the Act) § 245(m)(1), 8 U.S.C. § 1255(m). The Director, Vermont Service Center, denied the petition. 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

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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:

.....

(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:

*Matter of J-E-G-S-*

- (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. PERTINENT FACTS AND PROCEDURAL HISTORY

On October 1, 2010, the Director approved the Applicant's Form I-918, Petition for U Nonimmigrant Status. The Applicant's U-1 status was valid from October 1, 2010, until September 30, 2014. The Applicant filed the instant Form I-485, Application to Register Permanent Residence or Adjust Status, on October 31, 2013. On February 12, 2014, the Director issued a request for evidence (RFE), including, among other things, arrest report and conviction records for the Applicant's 2013 arrest for reckless driving. On August 7, 2014, the Director issued another RFE for arrest and conviction records relating to the Applicant's [REDACTED] 2014 arrest for the charge of drive-by shooting and for evidence that the Applicant's presence in the United States is justified on humanitarian grounds, to ensure family unity, or is in the public interest. The Applicant responded with additional evidence; however, the Director denied the application, finding that favorable discretion could not be exercised as the Applicant's 2014 criminal charges were still pending. On the Applicant's subsequent motion to reopen and reconsider, the Director again denied the application, concluding that the mitigating factors in the Applicant's case did not outweigh the negative equities to sufficiently establish that it was in the public interest to exercise favorable discretion on his

*Matter of J-E-G-S-*

application. On appeal, the Applicant submits a brief statement from counsel of record and additional evidence.

### III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Applicant has not overcome the Director's grounds for denial. The appeal will be dismissed for the following reasons.

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 her 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 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).

The record shows that after having been granted U-1 nonimmigrant status, the Applicant was charged with having committed the offense of reckless driving on [REDACTED] 2013. The underlying record indicates that a bench warrant was issued against the Applicant after he failed to appear at his criminal hearing. The Applicant was ultimately convicted of the amended charge of negligent driving in the second degree in violation of section 46.61.525 of the Revised Code of Washington on [REDACTED] 2014. After filing the instant application, the Applicant was arrested again for the offense of drive-by shooting committed on [REDACTED] 2014. He was convicted on [REDACTED] 2014, of assault in the second degree with a deadly weapon in violation of section 9A.36.021(1)(c) of the Wash. Rev. Code Ann. and was sentenced to six months on work/education release program. Assault in second degree is a class B felony for which the maximum sentence is a term of ten years, a fine up to \$20,000, or both.

The Applicant, in his September 2014 statement responding to the Director's second RFE, only briefly touches on the underlying circumstances of his arrests and asserts that he has since rehabilitated. However, although the Applicant stated that he learned from his [REDACTED] 2013

*Matter of J-E-G-S-*

reckless driving offense to be more careful when he drove and that he no longer drives at all anymore, the Applicant was arrested again for drive-by shooting, while his reckless driving case was still pending. According to the record, the Applicant was the driver of the car in which one of the passengers shot a gun out of the window at a group of individuals with whom the Applicant and his friends had a bad history. Another passenger in the Applicant's car was shot and killed during this confrontation. The Applicant asserted in his statement that he did not know that anyone in his car was shooting a gun. However, the underlying police report indicates that although the Applicant initially denied there was a gun in his vehicle, he admitted, after failing a polygraph test, that he heard shooting and saw one of his passengers with the gun afterwards. Additionally, as noted by the Director, the police report also indicates that this incident was one of several between the Applicant's group of friends and another group and that the Applicant was the driver in a previous incident of a drive-by shooting which was still under investigation. The report also indicates that the Applicant specifically drove up to the other group notwithstanding the violent history between the two groups. The Applicant in his statement below provided no probative information about the circumstances of this incident and he did not submit an updated declaration after his assault conviction, either below or on appeal, to further address his criminal history or his remorse and rehabilitation.

The Applicant claims that his presence in the United States is in the public interest as he is a victim of crime and he wishes to continue to receive the support of his family and community. He further asserts that his application should be granted in the interests of family unity as his lawful permanent resident mother, U.S. citizen brother, and his father are all in the United States, and on humanitarian grounds given the letters of support in the record and evidence showing his support of himself and his family. He also notes that he has nearly completed the requirements for his high school graduation and has been in the United States since he was two years of age. The record also contains certificates for completion of [REDACTED] programs, both of which, however, were completed prior to the Applicant's criminal conduct. On appeal, the Applicant submitted additional brief letters from his online high school advisor indicating that the Applicant continues to pursue his high school education while incarcerated, and from other family and friends, none of whom address his criminal history. However, apart from these short letters on appeal, the Applicant has not submitted an updated declaration or other evidence to demonstrate his remorse and rehabilitation following his assault conviction. As noted above, only the most compelling positive factors would justify a favorable exercise of discretion when the applicant has committed a serious violent crime.

The favorable and mitigating factors in the present case are the Applicant's family in the United States, his long term presence in the United States, his continued pursuit of education, and his recent work history. However, only the most compelling positive factors would justify a favorable exercise of discretion since the record shows he was convicted of having committed a serious violent crime. See 8 C.F.R. § 245.24(d)(11). The unfavorable factors are the Applicant's convictions for negligent driving and for felony assault, the former of which occurred during these proceedings, and his unlawful presence in the United States. When taken together, the adverse factors in the present case outweigh the favorable factors; therefore, we concur with the Director's negative discretionary finding and deny the Applicant's application on discretionary grounds.

*Matter of J-E-G-S-*

#### 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, the Applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-E-G-S-*, ID# 15220 (AAO Jan. 11, 2016)