



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

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

MATTER OF M-M-A-P-

DATE: JAN. 27, 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 her status to that of a lawful permanent resident. *See* Immigration and Nationality Act (the Act) § 245(m), 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.

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 July 9, 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, filed by the Applicant's mother on her behalf. The Applicant's U-3 nonimmigrant status was valid until July 8, 2014. The Applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on July 2, 2014. The Director issued a request for evidence (RFE) of the Applicant's continuous physical presence; the disposition of the Applicant's arrest on February 25, 2014, for

possession or use of narcotic drugs and possession or use of drug paraphernalia; and evidence that the Applicant's adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Additionally, the Director requested that the Applicant obtain a new Form I-693, Report of Medical Examination and Vaccination Record, to address her drug use in light of her drug-related arrest. The Applicant responded to the RFE with a statement, a new Form I-693, and additional evidence. The Director concluded that the positive factors in the Applicant's case did not outweigh the negative, and that the Applicant had not established eligibility for adjustment of status as a matter of discretion. The Director also indicated that the new Form I-693 the Applicant submitted did not address the Applicant's drug use. Accordingly, the Director denied the Form I-485.

The Applicant filed a timely appeal. On appeal, she submits a brief and additional evidence.

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 Form I-485 in the exercise of discretion.

Section 245(m) of the Act makes adjustment of status discretionary. The Applicant bears the burden of showing that discretion should be exercised in her 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).

Arrest reports for incidents that did not lead to criminal charges or a conviction can be considered negative discretionary factors. In *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995), the Board of Immigration Appeals (Board) stated that it was "hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein." As a result, the Board considered the arrest report but gave it "little weight." *Id.* In *Avila-Ramirez v.*

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Holder, the U.S. Court of Appeals for the Seventh Circuit found that the Board erred in giving an arrest report “significant weight” but clarified, “this is not to say that we read *Arreguin* to prohibit any consideration of arrest reports in the weighing of discretionary factors.” 764 F.3d 717, 725 (7th Cir. 2014) (citing *Arreguin*, 21 I&N Dec. at 42, and *Sorcía v. Holder*, 643 F.3d 117, 126 (4th Cir. 2011) (stating that *Arreguin* “did not indicate that it was *per se* improper to consider an arrest report . . .”). Therefore, although we do not give substantial weight to arrest reports that did not lead to conviction, we may consider them in our discretionary determination.

In *Matter of Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the 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 “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 record reflects that the Applicant’s history of arrests and convictions is as follows:

- On [REDACTED] 2002, the Applicant was arrested for misdemeanor assault. She was [REDACTED] years old at the time of the arrest. The disposition of this arrest is not clear from the record of proceedings.
- On [REDACTED] 2002, the Applicant was arrested for misdemeanor criminal damage. She was [REDACTED] years old at the time of the arrest. The disposition of this arrest is not clear from the record of proceedings.
- On [REDACTED] 2012, the Applicant was arrested and charged with assault by causing injury in violation of Ariz. Rev. Stat. § 13-1203(A)(1) and disorderly conduct by fighting in violation of Ariz. Rev. Stat. § 13-2904(A)(1). The charges were dismissed.
- On [REDACTED] 2014, the Applicant was arrested for possession or use of drug paraphernalia, in violation of Ariz. Rev. Stat. § 13-3415(A), and possession or use of narcotic drugs, in violation of Ariz. Rev. Stat. § 13-3408(A)(1).
- On [REDACTED] 2014, the Applicant was arrested and charged with driving or actual physical control of a vehicle while under the influence, in violation of Ariz. Rev. Stat. § 28-1381(A)(1); driving within two hours of having an alcohol concentration of .08 or more in violation of Ariz. Rev. Stat. § 28-1381(A)(2); driving or actual physical control of a

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vehicle while under the extreme influence of intoxicating liquor, in violation of Ariz. Rev. Stat. § 28-1382(A)(2) (alcohol concentration of .20 or more); and driving without proof of financial responsibility or insurance, in violation of Ariz. Rev. Stat. § 28-4135(C). On [REDACTED] 2014, a fifth count was added to the complaint against the Applicant, charging her with driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor, in violation of Ariz. Rev. Stat. § 28-1382(A)(1) (alcohol concentration of .15 or more but less than .20). On [REDACTED] 2015, the Applicant pled guilty to the fifth count and the remaining charges were dismissed. The Applicant was sentenced to imprisonment for 30 days, of which 19 days were suspended, completion of a DUI screening program, attendance at a victim impact panel, installation of an ignition interlock device in her vehicle for 12 months, substance abuse screening and treatment, and payment of fines.

In her brief on appeal, the Applicant contends that the Director erred in finding that the negative factors in her case outweighed the positive factors. The Applicant asserts that her history of arrests and drug and alcohol use is mitigated by trauma she experienced, including living in an abusive household, experiencing sexual abuse, and having a miscarriage. She states that her 2012 arrest for assault and disorderly conduct was not for a particularly serious crime and the charges were dismissed. She further contends that her arrest for drug possession in [REDACTED] 2014 was “unjustified” and based on “dubious” circumstances, she hypothesizes that “[t]he prosecuting authority must have . . . reasonably determined that [the] Applicant was a victim of overzealous law enforcement . . .,” and she notes that the record of proceedings does not indicate that she was criminally charged in relation to that arrest. She, therefore, argues that the [REDACTED] 2014 arrest should be “ignored” and not considered an adverse factor. Additionally, the Applicant alleges that her [REDACTED] 2014 arrest and conviction for driving under the extreme influence of alcohol was related to emotional trauma due to a miscarriage she experienced in September 2014, which was especially difficult for her because it occurred shortly after her boyfriend left her. The Applicant asserts that she stopped consuming alcohol after her [REDACTED] 2014 arrest, completed an alcohol abuse program, and participated in a therapy session. She further states that there are other positive factors in her case, including the fact that she came to the United States when she was a young child, graduated from high school, is employed, has paid taxes since 2010, and has a close relationship with her mother, who resides in the United States. The Applicant also indicates that she requires medical treatment in the United States due to the emotional trauma she suffered as a result of past family violence and her miscarriage.

The Applicant submitted a personal statement in conjunction with the Form I-485. In that statement, dated July 1, 2014, she reported that she was brought to the United States when she was ten years old and that she has tried to work and help her family. The Applicant stated that she witnessed violence since she was a child, and that she now depends on her mother for emotional support. She claimed that her mother believes the Applicant suffers from depression and anxiety relating to her immigration status, and that she would like to seek more psychological help. She also indicated that she has a good life in the United States and would not know how to begin a life in Mexico. The Applicant also stated that her mother suffers from depression and relies on the Applicant for help.

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She asserted that she has been careful to follow the rules in the United States so that she can stay in this country.

In a supplemental personal statement, which is undated but was submitted in response to the RFE, the Applicant stated that she was sexually abused as a child by cousins and an uncle, her mother was unable to emotionally support her because she was always working, and her father was violently abusive. The Applicant indicated that her father regularly abused alcohol and attempted to kill her mother on numerous occasions. The Applicant also described her arrest on [REDACTED] 2014. She stated that a friend gave her a ride home and she fell asleep in the back seat of the vehicle. According to the Applicant, she woke up in jail, at which point she requested a drug test and a lawyer after the police informed her of the charges against her. The Applicant stated that her sister later told her that the police found drugs hidden under the vehicle seat on which the Applicant was sleeping, and that the brother of the driver of the vehicle told the police that the drugs belonged to the Applicant. According to the Applicant, she was not aware that there were drugs in the vehicle. She claimed that she went to court for a scheduled hearing, but when she arrived she was told that the hearing was canceled. The Applicant further indicated that she has attempted to “stay out of trouble” for the past three years and has attended church. She stated that she learned she was pregnant in June 2014, but that the father of her child left her soon thereafter, and she then had a miscarriage in September 2014. The Applicant indicated that the miscarriage was painful for her but that she attempted to get “back on [her] feet” and viewed life differently. She stated that she became closer to her mother, focused on her job at a hospital, and engaged in other activities. She indicated that she regrets her past mistakes but has learned from them. The Applicant stated that she scheduled a counseling appointment through her employment.

The Applicant submits on appeal a psychological evaluation from [REDACTED] MEd., MA, Licensed Professional Counselor, dated June 18, 2015. [REDACTED] states that, according to the Applicant’s report, the Applicant’s father was abusive toward the Applicant, her siblings, and her mother. Additionally, [REDACTED] indicates that the Applicant reported having been sexually abused by two cousins when she was a child, and being physically and emotionally abused by two boyfriends. [REDACTED] states that the Applicant recalled that she began to drink alcohol at the age of 12 or 13, after an incident of sexual abuse by her cousin, because she felt lonely, confused, and depressed, and did not have sufficient support from her mother. [REDACTED] reports that, according to the Applicant, she continued abusing alcohol due to frustration over her immigration status. Additionally, [REDACTED] states that, per the Applicant’s account, she was involved in abusive relationships, got pregnant at age 16, and then had a miscarriage, which was traumatic. [REDACTED] reports that the Applicant wants to attend therapy and “start all over again.” According to [REDACTED] the Applicant’s “history of abandonment, sexual molestation, and domestic violence has affected her emotionally, psychologically, and socially to the point that she had difficulty making right choices in the past.”

As additional supporting evidence, the Applicant submitted with the Form I-485 a statement from her mother, who indicated that she is depressed and has struggled to maintain a normal life after experiencing domestic violence in Mexico and being the victim of an attack in the United States.

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The Applicant's mother also stated that she believes her children suffer from depression and anxiety related to their immigration status. She claimed that she would like her children to receive psychological care because she believes they were harmed by abuse from their father in Mexico. She also feels that it is very important that she and her children remain in the United States.

The Applicant also submitted additional letters of support. In a letter submitted with the Form I-485, the Applicant's friend, [REDACTED] stated that the Applicant is a caring, responsible, hardworking person. The Applicant's supervisor at work, [REDACTED] stated that the Applicant is a person of good moral character who is respected in her community. In response to the RFE, the Applicant provided a letter from [REDACTED] with whom she worked on a voluntary workplace safety committee. [REDACTED] asserted that the Applicant was dedicated to her work and demonstrated excellent performance. On appeal, the Applicant submits additional letters of support. [REDACTED] the father of a friend of the Applicant, states that the Applicant has been a positive influence on his daughter and is an honest and hardworking person. [REDACTED] a coworker and friend of the Applicant's, attests that the Applicant is a "dependable, reliable, hard working . . . , conscientious, honest, loving and caring person" who helps her family. Reverend [REDACTED] of the [REDACTED] Arizona indicates that the Applicant has attended mass at the church occasionally.

Additionally, the Applicant submitted award certificates from her employer, her diplomas from high school and middle school, an honor roll certificate from elementary school, and a certificate from the [REDACTED] for her demonstration of proficiency in several subjects on a standardized test.

The positive factors in this case are the fact that the Applicant has resided in the United States since she was a young child; her close relationship and residence with her mother, who is a lawful permanent resident (LPR) of the United States; the fact that her brother is also an LPR; the Applicant's employment; the support from her coworkers, supervisor, and friends; the fact that she pays taxes; her graduation from high school; her successes in elementary and middle school; her attempts to overcome abuse and trauma in her life; her compliance with court-ordered programs to address her drug and alcohol abuse; and her expression of remorse for mistakes she has made in the past and her desire to make positive choices in the future. However, we do not find that the positive factors outweigh the negative factors to establish that the Applicant is eligible for adjustment of status as a matter of discretion.

The negative factors in this case are the Applicant's arrests, her recent conviction, and the fact that she has not provided full information regarding her criminal history. The Applicant provided only a partial account of her criminal history on the Form I-485, which she filed on July 2, 2014. She listed her juvenile arrests on [REDACTED] 2002, and [REDACTED] 2002, and her assault and disorderly conduct arrest on [REDACTED] 2012. She did not disclose on the Form I-485 her arrest on [REDACTED] 2014, for possession or use of drug paraphernalia and possession or use of narcotics. In her response to the Director's RFE, the Applicant stated, through counsel, that a search of publicly available arrest records conducted prior to submission of the Form I-485 did not reveal the Applicant's

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██████████ 2014 arrest. However, regardless of the results in publicly available arrest records, the Applicant was aware of the arrest, which occurred only four months before she filed the Form I-485. Although the record of proceedings does not contain evidence that the Applicant was criminally charged as a result of the February 25, 2014, arrest, Part 3.C.1 of the Form I-485 asks whether the Applicant was ever “arrested, cited, charged, indicted, convicted, fined, or imprisoned . . .” and requests an explanation for any “Yes” response. The Applicant responded “Yes” to this question, but did not reveal her ██████████ 2014, arrest in her explanation. The Applicant has not provided a reasonable explanation for this omission.

Additionally, the Form I-918 Supplement A submitted by the Applicant’s mother on her behalf, which the Applicant signed on March 5, 2010, stated that the Applicant was never “arrested, cited, or detained by any law enforcement officer . . . for any reason.” Similarly, the Applicant submitted a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, on March 15, 2010, on which she indicated that she had never “been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance . . .” The Applicant has not explained why her two arrests from 2002 were not listed on the Form I-918 Supplement A and Form I-192. Although the arrests occurred while the Applicant was a juvenile, they were relevant to the questions on the Form I-918 Supplement A and Form I-192. We can consider acts of juvenile delinquency in our determination of whether the Applicant merits adjustment of status in the exercise of discretion. *Wallace v. Gonzales*, 463 F.3d 135; *see* 8 C.F.R. § 245.24(d)(11).

Furthermore, the Applicant has not provided full information or taken responsibility for most of her arrests. The Applicant has not discussed the circumstances of her juvenile arrests or provided the disposition of those arrests. She also has not explained her arrest on ██████████ 2012, for assault by causing injury and disorderly conduct by fighting. Moreover, the Applicant’s description of the circumstances surrounding her ██████████ 2014, arrest for possession or use of narcotics and possession or use of drug paraphernalia differs significantly from the information in the arrest report. In her statement submitted in response to the RFE, the Applicant asserted that she fell asleep in the back seat of a friend’s vehicle and that “when [she] woke up [she] was already in jail . . .” She claimed that her sister later informed her that the police found drugs “under the s[ea]t where [the Applicant] was sleeping.” However, the arrest report indicates that, after stopping a vehicle in which the Applicant was a passenger, the police officer “interacted with” the Applicant, who was “being uncooperative and refusing to give her name.” The arrest report further states that the Applicant exited the vehicle upon the police officer’s order, but then refused to follow the police officer’s instructions to sit down. According to the arrest report, the Applicant stood up multiple times, swayed when she walked, slurred her speech, screamed obscenities at the police officer, and threatened to kill the police officer. The reason for the significant discrepancy between the two accounts is not clear. Although the record of proceedings does not indicate that the Applicant was criminally charged for this incident, we may consider arrest reports as a factor in our discretionary determination. *Matter of Arreguin*, 21 I&N Dec. 38; *Avila-Ramirez v. Holder*, 764 F.3d 717. In this case, the significant discrepancy between the accounts of the Applicant and the police officer regarding the ██████████ 2014, arrest, does not establish that the Applicant takes responsibility for her actions and is rehabilitated.

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The Applicant claims that her [REDACTED] 2014, arrest for driving under the extreme influence of alcohol, for which she was convicted on [REDACTED] 2015, occurred as a result of emotional trauma she experienced after suffering a miscarriage. We recognize that the Applicant experienced emotional difficulties due to her miscarriage. However, the accounts of the Applicant's [REDACTED] 2014 arrest and its connection to her miscarriage are not clear. [REDACTED] states in the psychological evaluation that the Applicant reported that she became pregnant at age [REDACTED] and then suffered a miscarriage three months later, resulting in emotional trauma. However, the Applicant's medical records state that she had a miscarriage on [REDACTED] when she was 25 years old. It is not clear whether [REDACTED] is referring to a separate miscarriage, and [REDACTED] does not state that a miscarriage was connected to the Applicant's arrest in [REDACTED] 2014. In her brief submitted in response to the RFE, the Applicant stated, through prior counsel, that she was distraught over her miscarriage and "made the horrible decision to drink and drive only a few days later, on [REDACTED] 2014." However, the arrest occurred more than one month after her miscarriage, not a few days later as stated by prior counsel. In her own statement submitted with the RFE, the Applicant stated that she was not "able to handle" the pain of the miscarriage well, but she did not attribute her [REDACTED] 2014 arrest to emotional trauma from the miscarriage. The record of proceedings does not clearly establish a link between the two events such that the conviction stemming from the [REDACTED] 2014 arrest, which is serious and recent, can be mitigated by the miscarriage.

Additionally, the Applicant's recent criminal history, which includes a [REDACTED] 2014, arrest for drug-related crimes and a [REDACTED] 2015, conviction for driving under the extreme influence of alcohol, occurred after she obtained U-3 nonimmigrant status and does not indicate that she is rehabilitated. Although the Applicant completed court-ordered programs relating to her [REDACTED] 2015, conviction, including an alcohol and drug treatment program and attendance at a [REDACTED] these actions occurred recently, in May and June of 2015. The seriousness and recency of the Applicant's conviction for driving while under the extreme influence of alcohol, which involved an alcohol concentration of .15 or more, does not support a finding that her adjustment of status is warranted in the exercise of discretion.

The Applicant's criminal history outweighs the favorable factors in her case. Therefore, the Applicant has not demonstrated that her adjustment of status would be justified on humanitarian grounds or to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act.

IV. CONCLUSION

In these proceedings, the Applicant bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Applicant has not met that burden. Accordingly, the appeal will be dismissed.

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ORDER: The appeal is dismissed.

Cite as *Matter of M-M-A-P-*, ID#15490 (AAO Jan. 27, 2016)