



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

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

MATTER OF J-A-F-T-

DATE: JULY 5, 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 application. The Director concluded that the Applicant did not establish that it was in the public interest for him to adjust his status to that of a lawful permanent resident or that a favorable exercise of discretion was warranted in this case.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Applicant claims that his continued presence in the country is justified on humanitarian grounds and to ensure family unity and that granting the U adjustment application is not against the public interest.

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

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 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.

II. ANALYSIS

Upon a full review of the record, as supplemented on appeal, the Applicant has not overcome the Director's grounds 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

(b)(6)

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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).

The Director granted the Applicant U-3 nonimmigrant status based upon an approved Form I-918A, Petition for Qualifying Family Member of U-1 Recipient. The Applicant filed the instant Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), on March 7, 2014. The record shows that the Applicant was arrested for aggravated sexual battery, rape, and sexual battery on an unknown date. On [REDACTED] 2014, he was convicted, pursuant to a guilty plea, of "lesser included aggravated assault with intent to rape."¹ The Applicant was sentenced to 20 years, with 5 of those years to be served in prison, and the remainder to be served on probation provided that the Applicant complies with the conditions set by the Court. The Applicant did not submit any affidavits or personal statements explaining his criminal conviction.

The Applicant initially submitted letters from several of his high school teachers in which they described him as a leader and good student, and [REDACTED] who stated that the Applicant is a well-mannered man of good character who is registered in his Church and attending catechism classes. None of the affiants indicated that they knew of the Applicant's arrest and conviction.

In response to the Director's request for additional evidence (RFE), the Applicant submitted additional statements. The Applicant's sister described the ways in which their father abused and mistreated them, her brother's intelligence, and how he was protective over her. She noted that part of her life would be missing if he were taken away. The Applicant's employers indicate that he is a reliable employee. Neither the Applicant's sister nor his employers made any mention of his conviction. Similarly, his friends, his teachers, his girlfriend, [REDACTED] and his girlfriend's mother, [REDACTED] described him as a good, kind, helpful, optimistic and hardworking person. Likewise, they made no mention of the Applicant's arrest and subsequent conviction.

¹ The charges of aggravated sexual battery and sexual battery were *nolle prosequi*.

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The Applicant's criminal attorney, [REDACTED] stated that the Applicant is honest, kind, hardworking, intelligent, and nonviolent, and that he does not believe the Applicant's crime represents who he is. His bondsman indicated that the Applicant has maintained weekly contact and calls to let him know of any changes. The Applicant's mother stated that even though he "got in trouble with the law with the incident that occurred," she feels that he is a good person. She further described her son as a hard-working and good person. She indicated that he helps the family and that his deportation would cause her and her daughter emotional stress. The Applicant also submitted his high school and college transcripts, pay stubs, W-2's, and tax forms.

On appeal, the Applicant submits a letter from [REDACTED] the Applicant's case manager at the correctional facility where he is currently incarcerated. [REDACTED] states that the Applicant is a "model inmate" who is seeking to better himself through the rehabilitation process. The Applicant provides a letter and certificate showing that he has been certified as a Teacher's Aide in the facility's [REDACTED] program, in which offenders convert physical textbooks into alternative forms to accommodate the needs of students with print-related disabilities. He also submits an undated letter from [REDACTED] an educator at his high school, who indicates that the Applicant was in a volunteer community service club. She describes him as a mature, respectable, trustworthy, and dependable leader. [REDACTED] did not address the Applicant's criminal history.

In his brief on appeal, the Applicant asserts that he should be allowed to remain in the United States for humanitarian reasons and to ensure family unity, and that he would be a productive member of society if his U adjustment application is granted. He states that the evidence in the record shows he was the victim of abuse, and that his lawful permanent resident mother and sister need his emotional and financial support. In the brief, counsel for the Applicant indicates that the Applicant acknowledges he made a mistake and has taken responsibilities for his action. Counsel also notes that the Applicant is attending regular therapy sessions and classes, and that he regrets his past actions. However, the Applicant has not submitted a personal statement addressing his criminal conviction, nor has he submitted any evidence that shows he has taken responsibility for his actions. Unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The favorable and mitigating factors in the present case are the Applicant's long residence in the United States, close family ties, contributions to the family, pursuit of education, employment, volunteer activities, and steps to rehabilitate himself. Nevertheless, these positive equities do not outweigh the negative factors. Only the most compelling positive factors would justify a favorable exercise of discretion in cases where, as here, the applicant has committed or been convicted of a serious violent crime. 8 C.F.R. § 245.24(d)(11). The record shows that the Applicant has been convicted of the serious violent crime of aggravated assault with intent to rape. The Applicant has not submitted a personal statement discussing his conviction. There is no evidence in the record to show the Applicant is remorseful or has taken responsibility for his actions. The Applicant's conviction, which occurred during the pendency of this application, is so recent that he is currently still incarcerated as a result. Furthermore, although the record shows that his removal would cause his sister and mother stress and sadness, the Applicant has not shown that the denial of adjustment of

status would result in exceptional and extremely unusual hardship. *See* 8 C.F.R. § 245.24(d)(11). We find that when taken together, the severity of the adverse factors in the present case outweigh the favorable factors; therefore, we deny the Applicant's Form I-485 on discretionary grounds. The Applicant has not demonstrated that his adjustment of status is warranted for humanitarian reasons, for family unity, or is otherwise in the public interest.

III. CONCLUSION

In these application 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 J-A-F-T-*, ID# 17082 (AAO July 5, 2016)