



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

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

MATTER OF E-R-T-

DATE: JULY 11, 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 to exercise favorable discretion and approve the adjustment of status application.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Applicant asserts that his juvenile adjudications should be given less weight than criminal convictions, that rehabilitation is only one of many factors to consider, and that the weight of the evidence supports the approval of his adjustment application. The Applicant claims that he and his family will suffer exceptional and extremely unusual hardship if he is returned to Mexico.

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 C.F.R. § 214.14(h).

II. ANALYSIS

On appeal, the Applicant states that the positive and humanitarian factors outweigh the negative. He requests that we exercise discretion in his favor and approve the U adjustment application. He

(b)(6)

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asserts that he and his family will suffer extreme and unusual hardship if he has to leave the country. Based on the evidence in the record as supplemented on appeal, we find no error in the Director's discretionary determination to deny the U adjustment application.

The Director granted U-3 nonimmigrant status to the Applicant based upon an approved Form I-918A, Petition for Qualifying Family Member of U-1 Recipient. The Applicant entered the United States as a U-3 nonimmigrant on July 24, 2010, and he maintained valid status until July 23, 2014.

The evidence shows that the Applicant has the following history with the Juvenile Division of the District Court, [REDACTED] Minnesota (juvenile court):

- On [REDACTED] 2012, the Applicant was charged with juvenile delinquency pursuant to Minn. Stat. section 260B.007, subdiv. 6(1) for violating Minn. Stat. section 609.72, subdiv. 1, disorderly conduct (misdemeanor). At the disposition hearing, the court continued the matter for dismissal, conditioned upon the Applicant's completion of an approved anger management program, participation in multi-systemic therapy, not being arrested on new charges, remaining law abiding, and complying with unsupervised probation until [REDACTED] 2015. On [REDACTED] 2012, the court dismissed the charge, discharged the Applicant from probation, and terminated the proceedings.
- On [REDACTED] 2013, the Applicant was charged with juvenile delinquency pursuant to Minn. Stat. section 260B.007, subdiv. 6(1) for violating Minn. Stat. sections 609.221, subdiv. 1 and 609.101, subdiv. 2, assault in the first degree (delinquency felony age 16 and older). At the disposition hearing, the Applicant admitted the charges and was adjudicated delinquent. The juvenile court ordered the Applicant to be placed at [REDACTED] completion of the [REDACTED] chemical dependency treatment program, extended juvenile jurisdiction (EJJ) probation until his 21st birthday, a restitution study, and an adult prison sentence of 86 months, stayed, conditioned on completion of the conditions of EJJ probation.
- On [REDACTED] 2014, soon after the Applicant's placement in the [REDACTED] [REDACTED] the juvenile court charged the Applicant with violating probation. The related juvenile court proceedings are not in the record.¹

The record before the Director included evidence that the Applicant's parents left Mexico for the United States when the Applicant was approximately [REDACTED] years old, and that his father physically and emotionally abused his mother. After the Applicant's mother reported the abuse to the U.S. authorities, the Applicant's father was removed to Mexico, and the Applicant entered the United States on a U-3 nonimmigrant visa when he was about [REDACTED] years old. The Applicant indicated that he

¹ The Applicant indicates in a statement that, because of the probation violation, he lost his place in the [REDACTED] transition home, and was sent to Minnesota Correctional Facility – [REDACTED] for detention. The Applicant's probation officer states that the Applicant was detained for eight months at the [REDACTED] in 2015.

did not know English when he first arrived, had trouble adjusting at school, and started hanging out with the wrong crowd.

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, 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 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).

In *Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the Board of Immigration Appeals (BIA) stated, “[w]e 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 BIA added, “[w]e 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).

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A. Favorable Factors

The record reflects that the Applicant learned English, graduated from high school, and has worked in a variety of jobs. He has expressed remorse for his behavior, states that he attends NA/AA meetings on Wednesdays, and would like to continue to work. The Applicant stated that he would like to help support his mother and sisters and continue his education. He currently lives with his mother, a U.S. lawful permanent resident, and sisters, one a U.S. citizen, and the other a U.S. lawful permanent resident.

The record contains letters from the Applicant's probation officer, his mother, sister, an employer, friends, and certificates of completion from Aggression Replacement Training (ART), and the Center for Alcohol and Drug Treatment. [REDACTED] the Applicant's probation officer, states that the Applicant has participated in chemical dependency treatment, aggression replacement training, cognitive skill development classes, life skills programming, paid partial restitution,² and completed 60 hours of community service. [REDACTED] states that the Applicant has matured greatly, and that he will remain on probation, and under intense supervision, including drug testing, curfew checks, and ongoing employment and educational requirements, until [REDACTED] 2017. The Applicant's mother states that the Applicant is helping her to pay her mortgage, and that without his financial support, she fears she will lose the house. The Applicant's sister, an employer, and two friends observe how hard the Applicant has worked to become a better person, and has made positive changes in his life.

The Applicant's six-year residence in the United States, close ties to and support of his U.S. family members, graduation from high school, strong work ethic, efforts to improve himself, completion of classes as required by the terms of his probation, and community service are all positive factors to be considered.

B. Unfavorable Factors

The Applicant was arrested and charged with three juvenile offenses while he was in lawful U-3 nonimmigrant status. While the disorderly conduct charge was terminated early, the 2013 felony assault was severe, and resulted in serious injury to the victim, such that the juvenile court issued an alternate adult prison sentence of 86 months if the Applicant does not successfully complete EJJ probation.³ The Applicant remains under "intense supervision" and formal probation until [REDACTED] 2017. During his rehabilitation from the assault delinquency adjudication, the Applicant violated probation, resulting in an additional eight months of detention. The Applicant's probationary period and rehabilitation are not complete.

² Other evidence indicates that the Applicant has since paid full victim restitution of \$1967.

³ The Probable Cause Statement reflects that the Applicant and two others assaulted the victim, resulting in a nasal fracture, a possible fracture to the victim's C2 vertebra, and blood in the victim's bladder from being kicked or stomped on. The Applicant started the assault, hit the victim from behind, and kicked the victim in the face.

The Applicant asserts that his delinquency adjudications should not carry the weight of convictions. 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 Applicant states that rehabilitation is only one of many factors to be considered in the exercise of discretion. The Applicant asserts that he is fully rehabilitated, as he is drug-free, has shown remorse for his actions, taken positive steps to improve himself, and has made substantial changes to his everyday life, as shown by his increased financial, physical and emotional support for his extended family. Nevertheless, the Applicant remains on probation and under supervision by the juvenile court.⁴

C. Exceptional and Unusual Hardship

The Applicant asserts on appeal that he, his mother, and two sisters will suffer exceptional and extremely unusual hardship if his adjustment of status is denied. The regulations provide that, where the adverse factors are particularly serious, an applicant may demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. 8 C.F.R. § 245.24(d)(11). This is not an alternative method of demonstrating eligibility, but one of the many factors that USCIS may consider in its discretionary determination.

The Applicant contends that he is fully assimilated into American life, culture and language, and that the only people he knows in Mexico are his abusive father and elderly grandparents. The Applicant asserts that he is from the most dangerous part of Mexico, extreme poverty persists, and he will not have access to mental health services to help him recover from his abusive past. He contends that his mother, who endured ten years of “brutal domestic violence,” will suffer the most if he is removed to Mexico. The Applicant’s mother indicates that if the Applicant is returned to Mexico, it would be unbearable, she would be afraid that her abusive ex-husband will harm the Applicant, and she might lose her house without the Applicant’s financial help. She indicates that the Applicant has changed for the better, that he is now responsible, cooks and cleans, takes care of her grandson, and is a good person.

The Applicant cites *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981), and *Bastidas v. INS*, 609 F.2d 101 (3d Cir. 1979) (emotional aspects of separation of family members must be considered for purposes of determining extreme hardship) in support of his argument that separation from his family will cause exceptional and extremely unusual hardship. The cases cited by the Applicant indicate that emotional and other non-economic factors must be considered, but that such factors may be overcome.

We acknowledge that the Applicant and his mother will suffer emotionally, and she will lose the Applicant’s financial support, if the Applicant is returned to Mexico. The Applicant has not,

⁴ The Applicant’s ongoing probation serves the dual purpose of providing the Applicant with the opportunity for maximum rehabilitation, and protecting the public from potentially violent juvenile behavior.

however, presented details of specific hardships that he and/or his U.S. family members will suffer if he returns to Mexico. While we recognize that the Applicant is concerned that he may not have access to needed mental health care, and is worried about his personal safety and the rampant poverty in Mexico, his fears are generally articulated and do not overcome the serious nature of the Applicant's assault on the victim in this case. See 8 C.F.R. § 245.24(d)(11); *Matter of Jean*, 23 I&N Dec. at 383-384 (depending on the gravity of the negative factors, a showing of exceptional and extremely unusual hardship might still be insufficient to approve a U adjustment application).

III. CONCLUSION

The Applicant has not established that a favorable exercise of discretion is justified on humanitarian grounds, to ensure family unity, or is in the public interest. Section 245(m) of the Act; 8 C.F.R. § 245.24(b)(6).

In visa application 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 appeal is dismissed.

Cite as *Matter of E-R-T-*, ID# 16956 (AAO July 11, 2016)