



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

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

MATTER OF R-D-R-C

DATE: JULY 13, 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 her "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 merit a favorable exercise of discretion on humanitarian grounds or to ensure family unity, and that her adjustment of status would not be in the public interest. The Applicant filed a Motion to Reopen and Reconsider, which the Director ultimately upheld denied.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Applicant claims that United States Citizenship and Immigration Services (USCIS) made errors in denying the application, and that discretion should be exercised on her behalf.

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.

On October 1, 2010, the Director granted the Applicant U-1 nonimmigrant status based upon an approved Form I-918, Petition for U Nonimmigrant Status. The Applicant filed the instant Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), on

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April 29, 2014. The Director issued a request for evidence (RFE) of, in part, the Applicant's criminal record and evidence that the Applicant's presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest, but ultimately denied the adjustment application.

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). 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.* 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 record shows that the Applicant has the following criminal history:

- On [REDACTED] 2009, the Applicant was arrested for, and later convicted of, malicious mischief in the third degree under Washington Revised Code section 9A.48.090, after she threw a rock through her aunt's car window. The case was dismissed after she received a deferred sentence of 12 months on condition that she pay a fine of \$500 and restitution.
- On [REDACTED] 2013, while in U nonimmigrant status, the Applicant was arrested for assault in the fourth degree involving domestic violence, obstructing law enforcement, and disorderly conduct after the police were called in response to an altercation with her ex-boyfriend. She was convicted, pursuant to her guilty plea, of assault in the fourth degree not involving domestic violence, and disorderly conduct under Wash. Rev. Code sections 9A.36.041 and 9A.84.030, respectively. The Applicant was sentenced to 90 days in jail (suspended) and payment of fines. She was put on probation until [REDACTED] 2017.
- On [REDACTED] 2014, while still in U nonimmigrant status and while her U adjustment application was pending, the Applicant was arrested for harassment involving domestic violence. She was convicted, pursuant to her guilty plea, of harassment not involving domestic violence under Wash. Rev. Code section 9A.46.020, and during the proceedings a no contact order was issued against her. She was sentenced to 364 days in jail (359 suspended) and payment of fines.

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In her statements submitted below, the Applicant indicated that her father abused her and threatened to kill her and her children if he sees them again. She discussed her criminal record and indicated that she has sought counseling and attended alcohol classes. She noted that she cares about the laws in this country, that it is not her intention to break them, that she regrets her behavior, and that she has learned from her mistakes. However, the Applicant was convicted of her most recent crime after making these statements. The Applicant submitted letters from employers and co-workers who indicated that she is a good employee who works hard, is responsible, and is a good mother. She also submitted various affidavits from friends and family that described her as a good mother, hard worker, nice, caring, and as a good person who follows the law. Aside from her mother and her friend [REDACTED] none of these affiants mention the Applicant's criminal history. The Applicant's mother stated that her daughter is a good person, mother, and daughter, and that it would be dangerous for her to return to her country of origin, Mexico. Mr. [REDACTED] also noted that the Applicant is a good mother and that her life would be in danger in Mexico. He added that, regarding her 2014 arrest, he only called the police because he was worried about the Applicant, and indicated that the Applicant's ex-boyfriend told him that he did not really believe the Applicant was going to hurt him.

The Applicant also submitted an affidavit from [REDACTED] LICSW, and a letter from [REDACTED] MA, LMHCA, MHP, and [REDACTED] LICSW, CDP, from [REDACTED]. Ms. [REDACTED] reported that the Applicant was abused by her father and ex-boyfriend, and fears deportation to Mexico. She determined that the Applicant meets the diagnostic criteria for Post-Traumatic Stress Disorder (PTSD) and alcohol abuse disorder. Ms. [REDACTED] opined that the symptoms of these illnesses could have contributed to the behaviors that led to the Applicant's charges, but does not explain the correlation further. Ms. [REDACTED] a mental health therapist, and Mr. [REDACTED] program manager, stated that the Applicant suffers from Adjustment Disorder and alcohol abuse, and noted that she has been compliant with substance abuse treatment. The Applicant also submitted evidence that she has two U.S. citizen children and that she pays rent on time.

On appeal, the Applicant submits a brief, evidence that she has completed outpatient therapy, and copies of previously submitted evidence. She contends that the Director committed factual errors in finding that the felony harassment charge was dismissed for lack of jurisdiction and that she failed to provide a discussion of the said charge. She also asserts that she submitted sufficient documentary evidence regarding her criminal record. The Applicant further contends that the Director erred in placing undue weight on the relevance of police reports. The Applicant asserts that these errors constitute an abuse of discretion that undermines congressional intent in protecting victims of crimes. However, the Applicant did not describe her arrest for felony harassment in her original personal statement, and did not discuss the arrest until her statement submitted in support of her motion to reopen or reconsider. As such, the Director correctly noted that at the time of the original denial, the Applicant had not described her arrest for felony harassment. Although the Director incorrectly stated that the felony harassment charge was dismissed for lack of jurisdiction,¹ the

¹ The felony harassment charge was dismissed for lack of sufficient evidence, and was replaced with the gross misdemeanor harassment charge that the Applicant was ultimately convicted of. The charge of malicious mischief was

reason for the dismissal is irrelevant and did not result in any prejudice to the Applicant. To the extent that the Director implied that police reports were required, that portion of her decision is withdrawn. We find that again, this did not result in prejudice to the Applicant, and does not change the ultimate outcome of our decision.

On appeal, the Applicant further contends that the Director's denial of her U adjustment application was an abuse of discretion, citing to *Matter of Blas* and *De Leon v. I.N.S* for the propositions that in the absence of adverse factors, adjustment will normally be granted and that the Service must consider all relevant factors and discuss each separately. 15 I&N Dec. 626, 629 (BIA 1974); 861 F.2d 268 (9th Cir. 1988). As stated in *Matter of Blas*, where adverse factors are present, it may be necessary for the applicant to offset these by a showing of unusual or even outstanding equities. 15 I&N Dec. at 628. Generally, favorable factors such as family ties, hardship, and length of residence in the United States will be considered as countervailing factors meriting favorable exercise of administrative discretion. *Id.* at 628, 29. This is not a case where there is "an absence of adverse factors." Here, the Applicant's arrests are considered adverse factors that must be weighed against the positive factors. Our review does not demonstrate abuse of discretion by the Director, and we find that the Director properly considered and discussed the Applicant's multiple convictions as an adverse discretionary factor to be balanced with the positive factors.

The burden of showing that discretion should be exercised in her favor is on the Applicant. Section 291 of the Act; 8 C.F.R. § 245.24(d)(11). As discussed, the Applicant was arrested on three occasions, two of which occurred after she was granted U nonimmigrant status and one while her U adjustment application was pending and after she had expressed remorse and rehabilitation for her prior criminal conduct. In addition, the record does not contain evidence that she successfully completed probation.

The favorable and mitigating factors in the present case are the Applicant's family and community in the United States, her long-term presence in the United States, her assistance to law enforcement in the prosecution and investigation of a serious crime, her employment, her completion of outpatient therapy, and the danger she may face in Mexico. The unfavorable factors are the Applicant's numerous arrests, including a conviction while she was pursuing a benefit from the U.S. government; the recency of her criminal activity, lack of evidence that she completed her probation; and the lack of demonstrable rehabilitation. 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 U adjustment application on discretionary grounds.

III. CONCLUSION

In these 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.

dismissed after the juvenile court lost jurisdiction over the Applicant after she turned 18 years old, but was refiled as a misdemeanor and ultimately dismissed after deferred judgment.

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ORDER: The appeal is dismissed.

Cite as *Matter of R-D-R-C-*, ID# 17089 (AAO July 13, 2016)