



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

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

MATTER OF E-B-R-

DATE: JULY 22, 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 Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The Director concluded that a balancing of the mitigating and adverse factors in the Applicant's case did not establish that it was in the public interest to exercise favorable discretion and approve her U adjustment application. Although the Applicant subsequently filed a motion to reopen and to reconsider, the Director determined that she did not overcome the grounds for denial of the U adjustment application.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Applicant claims that U.S. Citizenship and Immigration Services (USCIS) abused its discretion by "overweighing . . . adverse factors," not properly weighing her children's hardships, and not considering whether "her continued presence in the [United States] is justified on humanitarian grounds *or* to ensure family unity."

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

**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 –

....

(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:

....

- (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

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 an applicant to offset these factors by showing sufficient mitigating factors. *Id.* An applicant may submit information regarding any mitigating factors he or she would like USCIS to consider when determining whether a favorable exercise of discretion is appropriate. *Id.* Depending on the nature of the 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 applicant's adverse factors, such a showing might still be insufficient. *Id.*; see *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 an 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 includes evidence of the Applicant's following criminal history since the approval of her U-1 nonimmigrant status in 2009:

1. A 2012 conviction for Driving Under the Influence (DUI) Manslaughter. Fla. Stat. Ann. § 316.193(3)(c)(3) (West 2012).
2. A 2012 conviction for Operating a Motor Vehicle While License Suspended, Revoked, Canceled, or Disqualified, and Causing the Death of Another. Fla. Stat. Ann. § 322.34(6) (West 2012).

The record reflects that throughout her administrative proceedings, the Applicant has not refuted these convictions or her culpable actions resulting in the convictions. On appeal, however, the Applicant asserts that in her denial, the Director did not objectively consider "any credible evidence" and discounted or did not give proper weight to the "substantial body of evidence" submitted to demonstrate the Applicant's efforts "to educate others on the dangers of driving under the influence." The Applicant also asserts that the Director abused her discretion by disregarding the exceptional and extremely unusual hardship, as discussed in case law, that her teenage children would suffer because she is "instrumental" in providing them stability and support because of their "significant mental health issues[.]" The Applicant further asserts that although her culpable actions resulted in the death of her youngest child, her criminal convictions for motorized vehicle offenses were not crimes of violence or aggravated felonies as they did not require a mental state like the criminal conduct discussed in case law.

The regulation at 8 C.F.R. § 245.24(d)(11) affords USCIS the sole authority in determining which factors it deems necessary for exercising its discretion favorably, and when there are adverse factors, it may be necessary that the Applicant submit supporting documentation of mitigating circumstances. Therefore, an adjudicator needs to reasonably consider all evidence in the record that has probative value, and in so doing, render a decision substantially supported by such evidence. Although the Applicant focuses on the number of documents submitted, the determination regarding the sufficiency of the evidence is determined not by the quantity of evidence alone, but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Moreover, in approving the Applicant's U petition, USCIS properly considered and applied the "any credible evidence" evidentiary standard. However, this evidentiary standard does not continue to be applied when a U nonimmigrant later seeks adjustment of status. Compare section 214(p)(4) of the Act, and 8 C.F.R. 214.14(c)(4), with section 245(m) of the Act, and 8 C.F.R. § 245.24(d)(11). The burden of proof for the U petition and adjustment application is a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375 (stating "[e]xcept where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought." [citations omitted]).

The Director considered the Applicant's personal statements along with statements submitted on her behalf, documents concerning her criminal history and rehabilitative efforts, family ties and her children's emotional and psychological wellbeing, and concluded that the Applicant did not sufficiently establish that the "positive equities" outweighed the severity of her conviction for DUI

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Manslaughter. The Director further raised the concern of the Applicant's ability to properly exercise judgment when considering her personal safety and the safety of others. Accordingly, the Director determined that it was not in the public interest to exercise discretion favorably.

In response to the Director's denial, the Applicant submitted a motion to reopen and to reconsider along with additional documentation, inclusive of psychological evaluations of her teenage children and their letters of support. Although she further supplemented the record with another personal statement and letters of support, the documents were cumulative to evidence already submitted and considered by the Director; reiterating the Applicant's feelings of remorse and acknowledgement of her culpable actions resulting in emotional pain to her children along with ongoing efforts in sharing her experiences with co-members of the [REDACTED]. Upon considering the administrative record in its entirety, inclusive of the Applicant's family unity as a favorable factor and humanitarian grounds such as hardship that the Applicant and her children have experienced since the loss of her youngest child, the Director again concluded that it would not be in the public interest to exercise discretion favorably. The Director noted, in part, that even if the Applicant had established extreme and exceptionally unusual hardship to her children, her culpable actions were "of sufficient gravity that neither the hardship evidence . . . nor recent rehabilitative efforts [could] establish" warranting a favorable exercise of discretion.

A. Adverse Factors

The Applicant's concurrent sentence in 2012 included: 366 days incarceration (4 days credited), 10 years of supervised probation, enrollment in DUI school, permanent revocation of her driver's license, and monetary penalties. The Applicant completed her term of imprisonment, but the record indicates that she remains on probation until 2023.

Although the Applicant asserts that DUI Manslaughter in Florida is not a crime of violence or an aggravated felony as defined in the Act, USCIS generally will not exercise its discretion favorably because of "the gravity of the adverse factors[.]" We recognize that the Applicant and her children have undeniably suffered emotional harm and will continue to be deeply affected by her youngest child's death, however, the record reflects that the Applicant's decisions to operate a motor vehicle upon consuming alcohol and not restraining her children with seatbelts as passengers in the vehicle were significant, contributing factors resulting in her conviction for DUI Manslaughter, for which she remains on probation for another 7 years.

B. Mitigating Factors

In her personal statements, the Applicant relayed that she came to the United States around 25 years ago. She indicates that she lives with two of her U.S. citizen children and her three additional U.S. citizen children also reside in the United States.<sup>1</sup> The Petitioner discussed the circumstances of her

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<sup>1</sup> "Three additional U.S. citizen children" includes: an adult son, who the Applicant indicates lives in Texas, and two minor children who live with their biological father.

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criminal convictions, relaying feelings of deep remorse, depression, guilt, and sadness for her culpable actions resulting in the tragic death of her youngest child and the effect of her actions on the other children. She also discussed her participation in mandatory parenting classes and engaging with co-members of the [REDACTED] to share her experiences related to driving a vehicle after consuming alcohol, and provided copies of certificates to demonstrate her successful completion of training courses and workshops during incarceration. In addition, she conveyed the need for her children to have a “stable home environment” along with concerns of subjecting them to further “disruptive emotional distress” upon separation if she were removed to Mexico, and alternatively, the distress of living in poverty, their difficulties in acculturating, and limited access to healthcare and educational facilities as well as general violence if they accompanied her.<sup>2</sup>

In letters of support, licensed mental health professionals reported, in part, the Applicant and her children’s participation with individual and family therapy since the Applicant’s youngest child’s death, their separation because of her incarceration, and the abuse inflicted upon her by her spouse and a former domestic partner. The evaluators diagnosed the Applicant’s eldest daughter with “Adjustment Disorder, With Mixed Disturbances of Emotions and Conduct, Chronic” and reported the Applicant’s teenage son “appears to be experiencing high levels of anxiety and symptoms of depression[.]” In a letter submitted on appeal, an evaluator generally discussed the eldest daughter’s ongoing depression and an attempt at suicide. In additional letters, the Applicant’s adult son, children, friends, coworkers, and members of her religious community discussed the care she has provided to her eldest daughter; the Applicant’s work ethic and community service activities; and the emotional effects on her family members if she were to return to Mexico.

### C. Weighing of the Factors as an Exercise of Discretion.

The favorable and mitigating factors in the present case are the Applicant’s length of residence and close family ties in the United States; hardships to her teenage children along with general hardships her U.S. citizen adult son and minor children would undergo in her absence; counseling services and efforts at rehabilitation by participating in community service activities that provide awareness about the risks of alcohol consumption and the operation of a motorized vehicle; steady employment; and filing of her taxes in 2010 and 2012.

The adverse factors are the Applicant’s convictions for criminal offenses, which occurred since being granted U nonimmigrant status, the recency of those convictions and the seriousness of her conviction resulting in the death of her youngest child. In addition, the Applicant remains on probation. Further, the Applicant entered the United States and was employed for a period without authorization and has not clearly demonstrated exceptional and extremely unusual hardship.

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<sup>2</sup> While the U.S. Department of State advises “U.S. citizens about the risk of traveling to certain places in Mexico due to threats to safety and security[.]” the Applicant’s home state of [REDACTED] is not identified as one for which the “advisory is in effect.” Bureau of Consular Affairs, *Mexico Travel Warning*, (April 15, 2016) <https://travel.state.gov/content/passports/en/alertswarnings/mexico-travel-warning.html> (last visited June 2016).

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When viewed in their totality, based on our discretionary determination and the gravity of the adverse factors, the favorable and mitigating factors do not outweigh the adverse factors in the present case. Accordingly, the Applicant has not demonstrated that her adjustment of status is warranted for humanitarian reasons, for family unity, or is otherwise in the public interest.

### III. 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of E-B-R-*, ID# 17074 (AAO July 22, 2016)