



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

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

MATTER OF A-D-

DATE: JUNE 2, 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 had not established that his application should be approved as a matter of discretion. The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Applicant claims that the positive equities outweigh the negative factors, and that we should exercise our discretion to approve the application.

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 --

- (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 September 15, 2011, 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 filed the instant Form I-485, Application to Register Permanent Residence or Adjust Status, on February 26, 2015. The Director issued a notice of intent to deny (NOID) the application, in part,

(b)(6)

Matter of A-D-

because the negative factors as reflected in the Applicant's criminal history outweighed the positive equities in his favor, and the record did not establish that the Applicant's continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest.

The evidence shows that the Applicant has the following criminal history in Minnesota:

- On [REDACTED] 2009, the court convicted the Applicant, pursuant to his guilty plea, of driving without a valid license, in violation of Minn. Stat. section 171.02.1, a misdemeanor; underage drinking and driving, in violation of Minn. Stat. section 169A.33.2, a misdemeanor; and sentenced him to one year of probation and payment of fees and fines. Probation closed on [REDACTED] 2010 [REDACTED].
- On [REDACTED] 2010, the court convicted the Applicant, pursuant to his guilty plea, of speeding in violation of Minn. Stat. section 169.14.3A, a misdemeanor. The court sentenced him to 90 days in jail (stayed), and payment of fines and fees. The court dismissed the remaining charges [REDACTED].
- On [REDACTED] 2010, the court convicted the Applicant, pursuant to his guilty plea, of driving after suspension in violation of Minn. Stat. section 171.24.1, a misdemeanor. The court sentenced him to 90 days in prison (stayed) and payment of fines and fees [REDACTED].
- On [REDACTED] 2010, the court convicted the Applicant, pursuant to his guilty plea, of liquor consumption under age 21, in violation of Minn. Stat. section 340A.503.1(a)(2), a misdemeanor, and ordered him to pay fines and fees [REDACTED].
- On [REDACTED] 2012, the court convicted the Applicant, pursuant to his guilty plea, of driving after suspension, second or more in three years, in violation of Minn. Stat. section 171.24.1, a misdemeanor, and ordered him to pay fines and fees. The court dismissed the charge of no insurance [REDACTED].
- On [REDACTED] 2013, the court convicted the Applicant, pursuant to his guilty plea, of theft in violation of Minn. Stat. section 609.52.2(a)(1), a petty misdemeanor, and ordered him to pay fines and fees [REDACTED].
- On [REDACTED] 2013, the court convicted the Applicant, pursuant to his guilty plea, of possession of shoplifting gear in violation of Minn. Stat. section 609.521(b), a felony, and sentenced him to 364 days in County Jail (361 days stayed), one year of probation, and payment of fines and fees. The court dismissed a simultaneously filed theft charge. The court discharged the Applicant from probation on [REDACTED] 2014 [REDACTED].
- On [REDACTED] 2014, the court convicted the Applicant, pursuant to his guilty plea, of driving after suspension in violation of Minn. Stat. 171.24.1, a misdemeanor, and ordered him to pay fines and fees [REDACTED].
- On [REDACTED] 2014, the court convicted the Applicant, pursuant to his guilty plea, of being in the cemetery after hours, in violation of Minn. Stat. 33, a petty misdemeanor, and ordered him to pay fines and fees [REDACTED].

(b)(6)

Matter of A-D-

- On [REDACTED] 2015, the Applicant was charged with 5th degree assault and fleeing a peace officer. On [REDACTED] 2016, the court convicted him, pursuant to his guilty plea, of disorderly conduct – offensive/abusive/noisy/obscene, in violation of Minn. Stat. section 609.72.1(3), a misdemeanor, and sentenced him to 90 days in prison, and payment of fines and fees [REDACTED]

On [REDACTED] 2015, U.S. Immigration and Customs Enforcement (ICE) arrested the Applicant, placed him into removal proceedings, and detained him on charges that he was removable under section 237(a)(2)(A)(ii) of the Act for having committed two crimes involving moral turpitude. On [REDACTED] 2015, the immigration court ordered the Applicant removed and granted withholding of removal under Article III of the Convention Against Torture, with the effect that the Applicant will be removed to any country that will accept him, other than Mongolia. ICE released the Applicant from detention under an Order of Supervision on [REDACTED] 2015.

On June 19, 2015, the Director denied the Form I-485, finding as a matter of discretion that the positive factors did not outweigh the negative, and that his adjustment of status was not justified on humanitarian grounds, to ensure family unity, nor was it otherwise in the public interest. The Applicant filed a timely appeal.

III. 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 Form I-485. He 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 Applicant's Form I-485.

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).

(b)(6)

Matter of A-D-

The record before the Director included evidence that the Applicant was raised in a family in which his father physically and emotionally abused him, his sister, and their mother, due in part to his father's alcohol abuse. The Applicant's personal statements and statements from his mother and sister show that the Applicant's father moved to the United States when the Applicant was five years old, and when he was eight, he and his sister were taken away from their mother and placed with their paternal grandparents in Mongolia.¹ The Applicant's mother stated that she returned to the abusive marriage so she could see her children again, and the record shows that the Applicant and his sister reunited with their mother and father in the United States when the Applicant was 12 years old. The Applicant's father's abusive behavior continued until 2010, when the Applicant's mother reported her husband's abuse to the police, and the Applicant's father has since been removed to Mongolia.

Subsequent to the family's separation from the Applicant's father, the Applicant was frequently cited for criminal offenses. In her statement, the Applicant's mother reported calling the police because of her son's underage drinking, and his sister stated that the Applicant's mother evicted him from their home because of his drinking and violent behavior, followed by a period when the Applicant was estranged from his family. In his statement in support of the Form I-485 the Applicant explained that in [REDACTED] 2013, he stole headphones from [REDACTED] because he was desperate and could not pay rent, and two months later he got caught stuffing a hat in his bag trying to keep his friend out of trouble. He stated that eventually he started turning his life around, got a job with the [REDACTED] [REDACTED] as a grounds keeper, moved in with his sister in September 2014, and enrolled in a math class to pursue his dream of becoming an engineer with the [REDACTED]. He recounted that he went out for a drink in [REDACTED] 2015 with his friend, and got into an altercation with the bouncer at the bar as he was leaving, conduct that resulted in his arrest and subsequent conviction for disorderly conduct. He stated that he is devoted to his family and cannot imagine life without them. He expressed the desire to be a role model for his youngest brother. The Applicant's sister indicated that when she and the Applicant moved in together, the Applicant had turned his life around, was financially and emotionally helpful, responsible, and caring.

With his initial application the Applicant submitted letters from long-time friends [REDACTED] [REDACTED] and [REDACTED] who expressed the belief that the Applicant's difficulties were caused, in part, by his lack of legal status in the United States, and recommended that he be favorably considered for lawful permanent residence. In response to the NOID, the Applicant submitted letters from friends, acquaintances and teachers recommending the Applicant's adjustment of status. His high school teacher, [REDACTED] indicated that the Applicant was very bright, well-rounded, trained with the [REDACTED] in the [REDACTED] and worked an extra year after graduation from high school at age 16 to develop job skills. [REDACTED] and [REDACTED] also taught the Applicant and recommended his character to USCIS, but none of the teachers indicates that he knew of the Applicant's arrests following his graduation. [REDACTED] and [REDACTED] co-founders of a men's support group that the Applicant joined just prior to his detention in [REDACTED] 2015, both

¹ The Applicant, his mother, and sister stated that because the Applicant's father is from a prominent Mongolian family, he has the power to execute threats against the family within Mongolia.

(b)(6)

Matter of A-D-

stated that they saw in the Applicant the ability to change his life for the better. [REDACTED] a co-worker at the [REDACTED] indicated that he knew of the Applicant's arrests for theft, and based on his observations of the Applicant's maturity and hard work, recommended that the Applicant be given a second chance. Friends and acquaintances indicated in 2015 that they noted marked improvement in the Applicant's behavior in the last couple of years. The Applicant submitted correspondence indicating that he had inquired about volunteering with the [REDACTED] to help troubled youth; photographs and correspondence with the local [REDACTED] indicating that he was involved in a recruiting program with the [REDACTED] and an undated letter from the [REDACTED] stating that he was employed full-time as a buildings and grounds worker and attends classes at the university.

The Applicant also submitted a psychological evaluation from [REDACTED] LP, who evaluated the Applicant in [REDACTED] 2015 while he was in detention. [REDACTED] reported that the Applicant suffered a traumatic head injury at the age of 14 which left him with memory issues, impulsivity, and that the Applicant coped with difficulties by drinking excessively. He indicated that the Applicant fit the diagnostic criteria for post-traumatic stress disorder related to the abusive treatment from his father. [REDACTED] recommended a thorough chemical dependency evaluation in light of the strong family history of chemical dependency and mental health intervention to deal with past traumas and to understand the impact they have had on his behavior.

The Director determined that the Applicant's long residence in the United States, close ties to family members with lawful residence in the United States, graduation from high school and pursuit of further education, volunteer activities and participation in the men's group, were all positive factors to be considered. She concluded, however, that his multiple convictions and continuing trouble with law enforcement were negative equities, and his continued presence in the United States was not justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest.

On appeal the Applicant submits a statement of rehabilitation, a chemical assessment summary, a letter from a social worker, and additional letters of support. In his statement, the Applicant indicates that since his release from ICE detention, he has received a chemical dependency evaluation, a counseling session, and is committed to changing his negative behavior. [REDACTED] LADC, [REDACTED] evaluated the Applicant for chemical dependency, and concludes that the Applicant does not fit the criteria for abuse or dependence and has a good prognosis if he follows recommendations. [REDACTED] observes that the Applicant "makes very poor decisions when alcohol is involved," and recommends individual counseling for a minimum of three months, or more if needed, in order to "reduce risk for recidivism and increase positive impact." [REDACTED] LICSW, [REDACTED] states that she met with the Applicant for individual counseling for the first time on April 29, 2016, and they plan to meet regularly. The Applicant's mother indicates in a letter that her son's detention has been painful for everyone in the family. She describes her struggles to raise her youngest son, and her daughter's ability to cope, without the Applicant's financial and emotional help. The Applicant's sister states in a letter that she is depressed since the Applicant was taken into

(b)(6)

Matter of A-D-

custody, and her emotional state has affected her work performance and her relationship with her mother. In his letter, the Applicant's eleven-year old brother states that he misses his brother and their activities together, and his mother has been sad and irritable. [REDACTED] who works with the Applicant's mother, states that she has contemplated suicide since her son has been in ICE custody, and requests that we consider her suffering when considering the Applicant's Form I-485.

We agree with the Director that the Applicant's long residence in the United States, his remorse for his criminal actions, close family ties, contributions to the family, pursuit of education, employment with the [REDACTED] volunteer activities, and steps to rehabilitate himself are positive factors to be considered in determining whether adjustment of status is warranted in the exercise of discretion. Nevertheless, these positive equities do not outweigh the negative factors. The Applicant committed and was convicted of a felony and three misdemeanor offenses while in lawful U-3 nonimmigrant status. He was released from probation for the felony shoplifting offense on [REDACTED] 2014, and six months later while drinking, he was arrested for behavior resulting in a conviction for disorderly conduct and a 90-day term of imprisonment.² [REDACTED] recommends continuing individual counseling to address behavioral issues. While the Applicant is taking positive steps toward rehabilitation, if [REDACTED] recommendations are followed, the psychological counseling will continue at a minimum until the end of July 2016. The fact that the Applicant has not yet completed treatment for alcohol abuse and that he was convicted for multiple crimes while in U visa status indicate that he is not fully rehabilitated. Therefore, the Applicant has not demonstrated that his adjustment of status would be justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act.

The Applicant asserts on appeal that his family will suffer exceptional and extremely unusual hardship if his adjustment of status is denied.³ 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. Here, although the record reflects that the Applicant's family members suffered emotionally when he was in ICE detention, the record does not show that the Applicant or his family members would suffer exceptional and extremely unusual hardship if the Applicant were removed. For this and the foregoing reasons, the evidence of record does not support a finding that the Applicant merits adjustment of status in the exercise of discretion. 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.

² The court convicted the Applicant approximately three months prior to the date of this decision.

³ The Applicant and his family members claim that he would suffer exceptional and extremely unusual hardship if he were removed to Mongolia. As the immigration court ordered that the Applicant not be removed to Mongolia, this argument is moot.

Matter of A-D-

IV. CONCLUSION

In visa 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 A-D-*, ID# 16570 (AAO June 2, 2016)