U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-A-L-A-

DATE: JUNE 14, 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 Form I-485, Application to Register Permanent Residence or Adjust Status. 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 his Form I-485.

The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. The Applicant claims that previously unavailable evidence demonstrates he warrants a favorable exercise of discretion because his behavioral issues are the direct result of "horrific abuse" he suffered as a child, and he has demonstrated a commitment to rehabilitation.

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 C.F.R. § 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

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 or her favor. 8 C.F.R. § 245.24(d)(11). 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 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).

When considering matters involving juvenile delinquency, the Board of Immigration Appeals (the Board) has determined:

> We 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 . . . . We have also held that the standards established by Congress, as embodied in the [Federal Juvenile Delinquency Act (FJDA)], govern whether an offense is to be considered an act of delinquency or a crime.

Matter of Devison-Charles, 22 I&N Dec. 1362, 1365 (BIA 2000).

In *Matter of Ramirez-Rivero*, the Board discusses the definitions of "juvenile" and "juvenile delinquency," stating:

> 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.' 18 U.S.C. § 5031 (footnote omitted).

18 I&N Dec. 135, 137 (BIA 1981).

Although an act of juvenile delinquency is not a criminal conviction on which to base removal or bar relief from removal, a juvenile offense may be considered when reviewing an application for a discretionary benefit, such as adjustment of status. *See Wallace v. Gonzales*, 463 F.3d 135 (2d Cir. 2006); *see also* 8 C.F.R. § 245.24(d)(11).

The record reflects that the Applicant is a juvenile and has the following criminal history since the approval of his U-3 nonimmigrant status:

1. Theft and Unlawful Driving or Taking of a Vehicle, in violation of section 10851(a) of the California Vehicle Code – sentence included probation for six months.

2. Vandalism, in violation of section 594(a) of the California Penal Code – declared a Ward of the State.

On his Form I-485, the Applicant indicated he had been arrested for the two offenses listed above. He did not, however, provide a discussion of the underlying circumstances for each arrest, and stated he was unable to submit any records "because those documents are confidential under California law."[1] The Director issued a request for evidence (RFE) as the record indicated that the Applicant had been involved with various offenses in California, including: theft of a vehicle, vandalism, and failure to obey an order from the Juvenile Court. The RFE also indicated that the Applicant may have been involved with an arrest after he submitted his Form I-485, and provided the Applicant an opportunity to submit additional evidence demonstrating "a favorable exercise of discretion is appropriate."

In his response to the RFE, the Applicant reasserted that all juvenile records were confidential and could not be released without an order issued by a Juvenile Court Judge in California. The Applicant submitted with the RFE the dispositions of the Juvenile Court proceedings concerning his arrests for theft and vandalism along with copies of the respective statutes. However, he did not provide documentation for the offense having occurred after the submission of the Form I-485, but stated "[t]his arrest, on [redacted] 2014, was for failure to appear at a juvenile court hearing[.]" and

[1] The Applicant did not provide the authority on which he made this assertion.

that he would submit the Juvenile Court judge's response to his request for the records. He also did not provide an explanation concerning his failure to obey the Juvenile Court order.

The Director considered the Applicant's personal statements, including his explanation why a disposition of a juvenile offense was unavailable, statements submitted on the Applicant's behalf, and dispositions of those juvenile offenses for which the Applicant provided documentation. The Director concluded, in part, that the Applicant did not provide supplemental documentation regarding the 2014 arrest and his failure to obey an order from the Juvenile Court, and did not submit sufficient evidence of the circumstances underlying his arrests, including police reports specifically requested in the RFE.

A. Favorable Factors

In his personal statements, the Applicant relayed that he came to the United States when he was three years old and discussed being abandoned by his father, living with his mother and two siblings, witnessing his mother having undergone domestic violence by her boyfriend, and being sexually and physically abused by the boyfriend. He also discussed illegally using drugs since he was 10 years old, remorse for his "irresponsible behavior," and efforts at rehabilitation, including attending school, enrolling in a Narcotics Anonymous program and completing a 20-week drug counseling program, and speaking with counselors about his drug use and behavior. He further indicated his intentions to do well in the group home to be reunited with his mother and sister, and "get a job and make a decent salary so [he] can take care of [his] family."

In letters of support, the Applicant's mother discussed the abuse her boyfriend inflicted upon her and the Applicant as an underlying factor resulting in the Applicant's "juvenile delinquency case." Licensed Clinical Social Workers and a Drug Treatment Counselor discussed the Applicant's participation in individual and group "substance use programs" along with his efforts to remain "drug free" and improve his anger management skills. In a letter submitted with the Applicant's appeal, the Applicant's probation officer indicates he "is doing extremely well at school," he demonstrates respect for staff and peers at the group home where he currently resides, and is complying with the terms and conditions of his probation. She also indicates he aspires to graduate from high school and pursue a vocation with certification in welding and masonry, "practice sobriety," and avoid "gang related activity/associations."

B. Adverse Factors

As "negative equities," the Director noted: the Applicant's admitted drug use; placement in "juvenile hall" and "juvenile camp" for repeated arrests and "sustained charges" because of offenses involving theft and vandalism; failure to appear in proceedings before the Juvenile Court; violations of probationary periods, including "testing positive" during a drug test; and an incomplete record of the underlying circumstances involving his offenses and violations of his probationary periods.

On appeal, the Applicant submits a letter issued by the Superior Court of California, indicating that the did not file charges related to his arrest in 2014. The letter also identifies three additional arrests the Applicant does not acknowledge or mention, but for which the District Attorney's Office did not file charges.[2] Although the Applicant also submits a copy of a printout based on a search of his name and date of birth to demonstrate his arrest history, the printout is only a partial copy and it does not contain a clear indication of the underlying reason(s) for each arrest and its outcome. For instance, the printout indicates that the Applicant was arrested on 2012,[3] and charged with a theft offense in violation of section 484(a) of the California Penal Code and truancy in violation of section 601 of the California Welfare and Institutions Code. However, the printout does not indicate the disposition of either charge. Also, the printout indicates that the Applicant was arrested on 2015, and charged with "LAMC." However, the Applicant does not provide an explanation of what is meant by "LAMC." Moreover, the Applicant has not provided any statement regarding these arrests, the circumstances surrounding the incidents, and how they demonstrate his rehabilitation. The Applicant has also not addressed the Director's concerns raised in the RFE and denial by providing a detailed explanation for the underlying circumstances of not obeying an order from the Juvenile Court.

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, his efforts to obtain a high school diploma, his participation in rehabilitation programs, and his expression of remorse for the behavior leading to the arrests he has acknowledged.

The adverse factors are the Applicant's criminal history for juvenile offenses, some of which involve the illegal use of drugs. The record reflects numerous arrests for vandalism and theft offenses since being granted U nonimmigrant status, several of which occurred after the filing of the Form I-485. The Applicant also admits to repeated violations of probation and is currently on probation. The Applicant only generally admits to three of his arrests. Although he submits information showing additional arrests, he has not acknowledged this criminal history in his statements and provided descriptions of the incidents, or provided a discussion of the ensuing process with police officers and in Juvenile Court, and how these incidents have affected his overall rehabilitation. Without complete information regarding his criminal history, remorse, and rehabilitation, the Applicant has not established that his favorable and mitigating factors overcome the adverse factors, and therefore, his adjustment of status would be justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

When viewed in their totality, based upon our discretion, the adverse factors in the present case outweigh the favorable and mitigating factors. Accordingly, the Applicant has not demonstrated that

[2] The letter indicates that the Applicant was arrested on 2014, 2015, and 2015.
[3] The letter issued by the Superior Court of California indicates that the arrest occurred on 2014.

he is rehabilitated and that his 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-A-L-A-*, ID# 16685 (AAO June 14, 2016)