U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-M-L-

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 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. The Director concluded that the Applicant did not establish that it was in the public interest to exercise favorable discretion and approve her Form I-485.

The matter is now before us on appeal. On appeal, the Applicant submits a brief along with additional evidence. The Applicant claims the favorable factors of "overwhelming community support, serious humanitarian concerns . . . and a sincere desire to improve her life" outweigh the adverse factors of a "non-egregious criminal and immigration history."

Upon *de novo* review, we will sustain 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).

A. Favorable Factors

In her personal statements, the Applicant relayed that she came to the United States approximately 20 years ago. She indicated that she serves as the primary caregiver to a lawful permanent resident daughter, and that two additional lawful permanent resident daughters and their children also reside in the United States. She discussed the circumstances of her criminal convictions, two of which were expunged upon the Applicant's successful completion of the probationary, financial, and educational program requirements of those convictions.[1] The Applicant further discussed her remorse and efforts at rehabilitation, including not drinking alcohol for approximately the past four years and attending counseling sessions. She also relayed fears of returning to Guatemala, where she indicated she was raped at the age of 11 by a neighbor, and where guerrillas killed her father and sister.

[1] Convictions vacated due to procedural or substantive defects in the criminal proceedings will not be considered for immigration purposes, but convictions vacated for rehabilitative or immigration reasons remain valid in immigration proceedings. *See Pickering v. Gonzales*, 465 F.3d 263, 266 (6th Cir. 2006) (affirming this interpretation of conviction at section 101(a)(48)(A) of the Act, as stated by the Board of Immigration Appeals in *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003), while vacating that decision on other grounds). As the Applicant has not shown that her convictions were vacated based on procedural or substantive defects in the underlying proceedings, her convictions remain valid for immigration purposes. However, we may consider the expungements in the context of mitigating factors for purposes of showing her compliance with and completion of the originally ordered sentences.

In letters of support, an Advance Registered Nurse Practitioner and a Licensed Mental Health Counselor discussed the Applicant's symptoms of post-traumatic stress disorder that she has reported experiencing because of the physical and emotional abuse her partner has inflicted upon her for over 25 years, her "past abuse of alcohol," and her fears if she were to return to Guatemala. The evaluations further discussed the effects of the Applicant's mental health on her daily routines, resulting in diagnoses of major depression and anxiety disorder along with the Applicant's previous need for antidepressant medications.[2] Also in several letters,[3] two of the Applicant's daughters along with members of her religious community, friends, and coworkers, discussed the care she has provided to her mentally disabled daughter as well as to her two grandsons while their mothers were at work; her community service activities and volunteerism; the emotional and physical effects that her return to Guatemala would have on her family members; and her efforts at learning English. In a Psychological Evaluation submitted on appeal, a Licensed Psychologist discussed the Applicant's daughter's mental health abilities and general behavior, diagnosing the daughter with "Moderate Mental Retardation" and indicating she "will most likely require living in a supervised environment" as her operational judgment is "[v]ery impaired." The evaluator also discussed the daughter's treatment for depressive disorder through prescriptive medications.

B. Adverse Factors

The record includes evidence of the Applicant's following criminal convictions in violation of the Iowa Code Annotated:

1. One offense (which occurred prior to the approval of her U nonimmigrant status) under the forgery provisions contained in section 715A.2 – sentence included deferred judgment; 2-5 years of probation under the "custody, care and supervision of the First Judicial District Department of Correctional Services."
2. One offense under the domestic assault provisions contained in section 708.2A – sentence included deferred judgment; unsupervised probation for 1 year; enrollment in a batterer's education program; and an order of "no contact" with the victim for 5 years.
3. Three offenses under the motor vehicle provisions contained in sections 321J.2, 321.174, and 321.263 – sentences included 60 days incarceration (58 days suspended); unsupervised probation for 1 year; enrollment in "drinking

[2] The record includes a document titled, "Evaluation Results," in which a Licensed Master Social Worker stated the Applicant had reported that she did not consume alcohol in the past year, she recognized that drinking had caused problems for her, and she met with a counselor at her church. The evaluation also referenced an alcohol-related criminal charge in 2012 as reported by the Applicant. It is unclear how the evaluator could report such a charge as the evaluation occurred in February 2011, about one-year prior to referenced charge. Accordingly, we give no weight to the information contained in this report as evidence of the Applicant's efforts at rehabilitation.

[3] Some of these letters were translated from the Spanish language but do not contain a translator's certification as required by the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, we give no weight to the information contained in these letters.

drivers" course and substance abuse evaluation program; and monetary penalties.

4. One offense under the alcoholic beverage provisions contained in section 123.46 – sentence included monetary penalties.

On appeal, the Applicant does not refute that she has been convicted of these offenses and states that she has been forthcoming about her criminal history. Regarding her conviction for operating a motor vehicle while intoxicated, she states she was "just barely over the Iowa legal limit," and in reference to her conviction for public intoxication she describes being unable to communicate with law enforcement officers about the underlying circumstances prior to her arrest. She further explained the circumstances underlying her conviction for domestic assault, stating that when defending herself from her abusive partner, she "hit him and caused an injury to his forehead." She also stated that her counsel, who represented her in those proceedings, "was going on vacation and he advised [her] to plead guilty because he said this would end the whole process quickly."

To the extent that the Applicant denies culpability of the charges for which she was convicted, we lack authority to look behind the Applicant's convictions to reassess her guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine an individual's guilt or innocence). The record also does not include an indication that she has pursued a claim of ineffective assistance against any attorney who represented her or that she attempted to withdraw the plea resulting in her convictions. Moreover, the underlying Complaint for the domestic abuse charge conflicts with the Applicant's claim that her partner was the aggressor:

> Upon arrival[,] Officers were directed to the [Applicant] by witnesses . . . . Upon further investigation[,] it became known the [Applicant] has sought out her [partner] . . . [She] confronted him about the alleged affair and came after him. At some point[,] the [Applicant] got hold of the victim[']s car keys and struck him several times in the face and head.

In addition, the Applicant's administrative record demonstrates that an Immigration Judge granted the Applicant voluntary departure "in lieu of an order of removal[,]" which the Board of Immigration Appeals affirmed. The record reflects that the Applicant has not departed from the United States pursuant to the order, and consequently, is subject to a final order of removal.

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; extreme hardship to her mentally disabled lawful permanent resident daughter along with general hardships she and her other lawful permanent resident daughters would undergo in her absence; satisfactory completion of probation, including expungement of her convictions for forgery and domestic assault; counseling services and efforts at

rehabilitation by avoiding alcohol, a contributing factor leading to some of her arrests; steady employment and community services; and filing of her taxes in 2007.[4]

The adverse factors are the Applicant's convictions for criminal offenses, several of which occurred since being granted U nonimmigrant status; lack of acknowledgement for her culpable actions resulting in the domestic assault conviction; use of an alias when she attempted to open a bank account, leading to her arrest and conviction for forgery; entry into the United States and employment without authorization; and an order of removal.

The Applicant's continued efforts at improving herself, commitment to her family, and contributions to her community indicate that she is making positive contributions to society and is not a danger to the community. When viewed in its totality, the record contains compelling evidence of positive equities in the Applicant's favor which outweigh the negative factors. Accordingly, the Applicant has demonstrated that her adjustment of status is warranted for humanitarian reasons, for family unity, and 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 met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of C-M-L-*, ID# 16642 (AAO June 14, 2016)

[4] The Applicant's administrative record also contains copies of tax documents for the 2008, 2009, and 2014 tax years which were not signed and which the record does not sufficiently demonstrate were actually filed with the Internal Revenue Service.