



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

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

MATTER OF N-E-H-

DATE: JUNE 16, 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 the positive equities did not overcome the Applicant's "pattern of arrests and convictions" and the "unresolved" ambiguities concerning the Applicant's criminal history, and accordingly, the Applicant did not establish that it was in the public interest to exercise favorable discretion and approve the U adjustment application.

The matter is now before us on appeal. On appeal, the Applicant submits a limited statement along with additional evidence. As stated in her response to a notice of intent to deny (NOID), she reasserts that in lieu of a Sheriff's Police Clearance Certificate, she will submit "her California criminal history" requested from the California Department of Justice. To date, the record does not include such evidence. The Applicant also reasserts that a favorable adjudication of the U adjustment application will provide her the necessary stability to heal, to help provide "her family a better future[.]" and to reinstate her confidence in reporting crimes to law enforcement.

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 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 initially came to the United States approximately 26 years ago when she was about 18 years old. She indicates that she has four U.S. citizen children, one of whom she continues to care for, and an additional lawful permanent resident daughter who resides here. She also discusses having been diagnosed with post-traumatic distress disorder (PTSD) and suffering from anxiety attacks, depression, an inability to remember dates, and undergoing therapy to help overcome the shame she feels upon having been raped.

In letters of support, a Behavioral Health Therapist and a Licensed Clinical Social Worker discussed the Applicant's diagnoses of Clinical Depression and Generalized Anxiety Disorder along with her symptoms of PTSD and the effect that her mental health has on her behavior and employment. They also indicated that the Applicant has participated in therapeutic programs to address her emotional health and "shop lifting behavior," along with recommendations that she maintain "medication compliance" and follow-up with her primary care provider.

B. Adverse Factors

On the U adjustment application, the Applicant indicated that she was charged under the California Penal Code in 1993 with theft and failure to appear in 1998, and that the charges were dismissed. Regarding her theft arrest, the Applicant indicates that she was using an alias at the time of her arrest. The Applicant also indicated that in 2008 she was convicted of driving without a license in violation of section 12500 of the California Vehicle Code for which a warrant was issued for her appearance and for which she was ordered to pay a fine. However, the Applicant did not provide a detailed discussion of the underlying circumstances of these offenses and further did not disclose her involvement with any criminal activity since the approval of her U-1 nonimmigrant status. The Director issued a request for evidence (RFE) noting that the record included evidence of the Applicant's involvement with additional offenses in violation of the California Penal Code, including, forgery, theft, and failure to appear. The Director also indicated that as these alleged offenses were committed after the approvals of her U-1 nonimmigrant status and previous waiver of inadmissibilities, they were not waived. The Director requested that the Applicant submit evidence of her good moral character and criminal history, which could include an affidavit, arrest reports, and "[d]ispositions for all offenses . . . [she] may have committed since submitting [her] Form [I-485] . . . ."

In her response to the RFE, the Applicant indicated that she was convicted of the following since the approval of U-1 nonimmigrant status:

1. Violating the theft provisions contained in sections 484 (larceny, false pretenses, embezzlement) and 490.1 (petty theft) of the California Penal Code on three separate occasions – sentences included 36 months of summary probation; incarceration for 3 days in one instance and 30 days in another; and ordered to stay away from a commercial retail store.
2. Violating section 459 (burglary) of the California Penal Code – sentence included an order to stay away from two commercial retail stores.<sup>1</sup>

Also in her response, although the Applicant stated she had "been arrested 3 times for the same thing[]," she provided a limited explanation regarding only two of the aforementioned convictions, along with the circumstances why two social security cards were in her possession during one of her encounters with law enforcement. She further explained that as the victim of rape, including an incident separate from the qualifying criminal activity for which she received approval of U-1 nonimmigrant status, she has endured PTSD and anxiety attacks. While she stated that the anxiety attacks resulted in her taking items and forgetting to pay for them, she did not provide probative details of the circumstances concerning each of the aforementioned convictions.

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<sup>1</sup> Although not referenced by the Applicant, the record reflects that she also was sentenced to 3 years of probation and to attend a "shoplifter course."

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Subsequently, the Director issued a notice of intent to deny (NOID), listing the offenses in violation of the California Penal Code for which the Applicant was involved since the approval of her U-1 nonimmigrant status. The Director also stated the record reflected not only the Applicant's "ongoing risk to the property of others[.]" but also her association with criminal activity "involv[ing] an act of violence" since the submission of her response to the RFE, including her "apparent arrest and/or citation for inflicting corporal injury on a spouse/cohabitant[.]" The Director indicated that the record did not contain sufficient documentation of the Applicant's efforts "to address [her] psychological issues and curb [her] problematic behavior[.]" and expressed concern that she was arrested multiple times on the same day for theft-related offenses. Accordingly, the Director again requested the Applicant to submit evidence of her criminal history, which could include arrest reports, charging documents, and dispositions. The Director also requested that the Applicant submit police clearance certificates, evidence of efforts she has undertaken in the therapeutic process to address "the pattern of behavior" leading to her multiple arrests, and additional evidence to support a favorable exercise of discretion in the adjudication of her U adjustment application.<sup>2</sup>

In her response to the NOID, the Applicant stated she has been "re-traumatized . . . and is trying her best to obtain additional documentation[.]" She described the circumstances concerning her involvement with the charge for "inflicting corporal injury on a spouse" and her efforts in obtaining documentation from the Sheriff's Department – [REDACTED] concerning the incident. She also stated that in lieu of a police clearance certificate, she would submit fingerprints to the Department of Justice in [REDACTED] to obtain a complete record of her arrests, citations, and dispositions.

In the denial, the Director again listed the offenses in violation of the California Penal Code for which the Applicant was involved since the approval of her U-1 nonimmigrant status and concluded that her lack of candor by not including those offenses on her U adjustment application was an adverse factor. The Director further concluded that additional adverse factors included the fact that the Applicant has not supplemented the record with a criminal history summary containing the disposition concerning her involvement with "inflicting corporal injury on a spouse." On appeal, the Applicant provides a letter from the [REDACTED] stating "prosecution was declined" in regards to her arrest for "inflicting corporal injury on a spouse." However, as previously stated, she still does not supplement the record with "her [remaining] California criminal history."

In addition, although not discussed by the Director, the record indicates that during the Applicant's last attempted entry into the United States, she claimed to be a U.S. citizen and attempted to smuggle two children who were not hers. Accordingly, the Applicant was placed in removal proceedings before the Immigration Court, which were subsequently terminated. The record reflects that the Applicant did not disclose in her motion to terminate those proceedings her complete criminal history and convictions, stating that she:

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<sup>2</sup> The NOID included additional requests for information that will not be further discussed in our decision as we previously addressed them in our discussion concerning the Applicant's "favorable factors," or the Applicant sufficiently addressed them in her response to the NOID.

(b)(6)

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[D]oes not pose a threat to national security, is not a human rights violator or convicted criminal. Also [the Applicant] has no record of conduct requiring a 212(h) or 212(i) waiver as her only arrest for theft was dismissed.

On appeal, the Applicant does not refute any of the criminal history alleged in the Director's decision. Instead, she provides the aforementioned information that the [REDACTED] declined to prosecute her for the 2015 arrest and states that she continues to undergo therapy and intensive counseling.

### 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, along with her commendable efforts to continue therapy as a victim of rape and to improve her mental wellbeing. In addition, she makes continuing efforts at rehabilitation in order to address her behavior which is an underlying factor for her involvement with criminal activities.

The adverse factors are the Applicant's numerous arrests and convictions for property-related offenses with the most recent having occurred within the past two years, the use of an alias, and possession of a social security card that did not belong to her. In addition, the Applicant lacked candor regarding her criminal history when filing the U adjustment application, has not subsequently discussed all of her criminal history, and has not submitted a complete record for the alleged offenses, including any pending probationary periods.

When viewed in their totality, based on our discretionary determination, the adverse factors in the present case outweigh the favorable and mitigating factors. Accordingly, the Applicant has not demonstrated that she is rehabilitated and 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 N-E-H-*, ID# 16726 (AAO June 16, 2016)