



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

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

MATTER OF R-B-M-

DATE: OCT. 20, 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), concluding that the Applicant did not establish that she is eligible for adjustment of status as a matter of discretion.

The matter is now before us on appeal. The Applicant submits a brief and additional evidence. She asserts that the Director gave insufficient weight to the favorable and mitigating factors in her case while weighing the adverse factor of her criminal conviction too heavily. She claims that the Director did not consider the role of domestic violence in the Applicant's criminal conviction and considered only the police report without weighing the Applicant's account of the incident. Furthermore, the Applicant contends that the Director did not analyze whether the Applicant's adjustment of status is warranted for humanitarian reasons, family unity, or the public interest. The Applicant also states that the Director erred in denying her U adjustment application on the basis that the sentencing for her criminal conviction was not yet final.

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

I. 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

The Applicant filed the instant U adjustment application on July 28, 2014. Upon a full review of the record, as supplemented on appeal, the Applicant has not overcome the Director's ground for denial.

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 the applicant to offset these factors by showing sufficient mitigating factors. *Id.* An applicant may 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 an 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 alien's adverse factors, such a showing might still be insufficient. *Id.*; see *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). For example, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a

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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 reflects that on [REDACTED] 1994, the Applicant was convicted of assault with a deadly weapon other than a firearm in violation of Cal. Penal Code section 245(a)(1). She was released on her own recognizance and did not subsequently appear for a scheduled sentencing hearing. A bench warrant was issued for her arrest. On [REDACTED] 2016, the Applicant appeared for sentencing, at which time she was sentenced to 69 days in jail, with credit for 69 days served.

The Applicant did not mention her 1994 arrest and conviction on any of the requests for immigration benefits she filed between 1999 and 2014. Those requests include eight applications for Temporary Protected Status (TPS) filed between 1999 and 2010; her Form I-918, Petition for U Nonimmigrant Status (U petition), which she filed on August 16, 2010, and was approved on January 14, 2011; a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, filed on August 18, 2010, and approved on January 26, 2011; and her U adjustment application. On each of these requests, the Applicant answered “no” to questions regarding whether she had ever been arrested, cited, or detained by law enforcement or charged with a crime. After discovering the conviction, the Director issued a request for evidence (RFE), and the Applicant responded with documentation regarding her criminal history.

In an affidavit dated July 8, 2015, the Applicant stated that at the time of her arrest in 1994, she was living in California with a boyfriend, L-, who assisted her financially but was physically abusive when he drank alcohol. She claimed that she tolerated L-'s abuse because she needed his help paying the rent and sending money to her children in Honduras. The Applicant indicated that on the day she was arrested, she came home to find L- with another woman, with whom she had an altercation. The Applicant stated, “Somehow one of us got a hold [*sic*] of a knife, and she ended up fleeing and then claiming to be the ‘victim.’” She also stated that L- supported the other woman's version of the events. According to the Applicant, she pled guilty because she was desperate to get out of jail in order to work and send money to her children. She claimed that when she was released, she could not return to L-'s home and became homeless. The Applicant recounted that her brother suggested she live with him in Washington, so she moved there and found a new job. The Applicant stated that she did not realize that she was expected to return to court for sentencing because jail officials told her she was “free to go.” She expressed remorse for her misunderstanding regarding the sentencing hearing.

She further stated that when she first applied for TPS, she hired an unlicensed immigration assistant, or *notario*, who did not ask about the Applicant's criminal history. The Applicant explained that she mistakenly believed that the approval of her initial TPS application and subsequent renewals was an indication that USCIS had forgiven her criminal conviction. She similarly stated that, when she applied for U nonimmigrant status and adjustment of status, it did not occur to her to tell her attorney about her 1994 conviction because she believed the issue had been resolved. The Applicant asserted that she did not intend to lie, but had simply tried to forget the part of her life involving her conviction and her abusive relationship with L-. She requested forgiveness and stated that she has

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strong financial and family ties to the United States and would lose everything if she had to return to Honduras. In addition, she stated that she attends church and volunteers, and believes she would be killed in Honduras.

In a previous affidavit, dated July 11, 2014, the Applicant stated that she works hard and enjoys her job, and that she is proud to own a home. She indicated that she has three children in the United States, one of whom is a lawful permanent resident and the other of whom holds TPS. She also stated that she has five U.S. citizen grandchildren. The Applicant noted that she is very close with her children and grandchildren, spends significant time with them, and helps care for her grandchildren while her children are working. She stated that she has attended mass at a Catholic Church every Sunday since first arriving in the United States in 1990, and that she participates in church activities and makes donations. The Applicant reported that her U nonimmigrant status is based on having been the victim of domestic violence, and that she cooperated with the police in the investigation and remains willing to do so.

The Applicant also submitted a letter from her pastor, who asserts that the Applicant has been an active member of the church for over 10 years. The Applicant's employer also stated in a letter dated April 27, 2015, that the Applicant had been employed full-time at a hospital since May 13, 2005, and that she is a reliable employee. In addition, the Applicant provided documentation of her financial ties to the United States, including bank statements, federal income tax returns from 2011, 2012, and 2013, utility bills and car insurance statements, the title to her vehicle, documentation of her purchase of a home in 2005, and resolution of bankruptcy proceedings related to a mortgage loan modification agreement. Furthermore, the Applicant submitted receipts of money transfers she has made to relatives in Honduras. The Applicant also provided proof of her community service at a food bank on several occasions between May 15 and June 26, 2015, as well as birth certificates of three U.S. citizen grandchildren and two U.S. citizen siblings.

As additional supporting evidence, the Applicant submitted 12 letters from friends and family members. All writers stated that the Applicant is a hardworking, responsible, honest person who helps her family and friends and is valued in her community. The writers indicated that the Applicant has a very close relationship with her children and grandchildren, always putting them first, and that a separation would be very difficult for the entire family. Also, the writers indicated that it would be difficult for the Applicant to return to Honduras after living and working in the United States for so many years. The writers stated that the Applicant deserves to remain in this country.

A. Adverse Factors

Adverse factors in this case include the Applicant's conviction for assault with a deadly weapon other than a firearm and her subsequent failure to appear for a sentencing hearing. Also, the Applicant was sentenced in relation to her 1994 conviction only recently, in [REDACTED] 2016. Additionally, the Applicant did not reveal her conviction on any of the immigration applications or

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petitions she filed between 1999 and 2014. Her TPS was withdrawn when her felony conviction was discovered.

B. Favorable and Mitigating Factors

Favorable factors in this case include the Applicant's residence in the United States for over 25 years since 1991, her employment in the same job since 2005, the fact that she owns a home, her payment of federal income taxes in 2011, 2012, and 2013, and significant other financial ties to the United States. Also, the Applicant provides financial, physical, and emotional support for her children and grandchildren and sends money to relatives in Honduras. Her family and friends have expressed that she is a hardworking person who puts family first. She has a close relationship with her children, who hold lawful status in the United States, and her U.S. citizen grandchildren, and states that she and her family would suffer hardship due to separation if she were not permitted to remain in this country.

Additionally, the record does not indicate that the Applicant has had any problems with law enforcement other than her conviction and subsequent failure to appear for sentencing in 1994. Furthermore, the Applicant has explained that her failure to appear for sentencing was mitigated by her homelessness in California and her need to pursue financial stability with the support of her brother in Washington, her past abusive relationship which was linked to her conviction, and her misunderstanding of the terms of her release from jail. The record reflects that the Applicant received U nonimmigrant status after surviving severe domestic violence, and she assisted in the prosecution.

C. Weighing of the Factors as an Exercise of Discretion

The Applicant's conviction for assault with a deadly weapon other than a firearm is for a serious violent crime, and therefore only the most compelling positive factors would justify a favorable exercise of discretion. 8 C.F.R. § 245.24(d)(11). Also, due to her failure to appear for a sentencing hearing in 1994, the final resolution of the Applicant's conviction occurred recently, approximately [REDACTED] ago.

Additionally, the Applicant signed 11 requests for immigration benefits in which she indicated she had never been arrested, cited, charged, or convicted of a crime. These statements were not accurate, and we consider this to be a serious negative factor in light of the high number of applications filed over a period of many years. Although the Applicant asserts that an unlicensed immigration assistant filed her initial TPS application and did not ask about her criminal history, and that she innocently believed that it was unnecessary to list the conviction in any subsequent application or petition because she assumed USCIS had forgiven her for it, she signed the applications and petitions under penalty of perjury. The requests she filed clearly asked whether the Applicant had *ever* been arrested, cited, charged, or convicted for any crime. The Applicant does not allege that she was unaware of her conviction or of the questions related to her criminal history;

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instead, she asserts that she believed her conviction was irrelevant. This explanation is not reasonable in light of the questions asked.

We acknowledge that the Applicant has resided in the United States for over 25 years, has significant financial ties to this country, and has been a reliable employee at the same place of employment for over 10 years. Also, we recognize that the Applicant has very close family ties to the United States, particularly with her children who hold lawful permanent residence and TPS, her U.S. citizen grandchildren, and her U.S. citizen siblings, and that her family relies on her for financial and emotional support. The record also demonstrates that the Applicant is involved in her community through her church and volunteer work. Furthermore, the Applicant's conviction and subsequent failure to appear for sentencing were mitigated by the context of the domestic violence relationship in which they occurred. Also, the Applicant has expressed remorse for her failure to appear for sentencing. Additionally, the Applicant has not been involved in additional criminal activity. Nonetheless, the favorable and mitigating factors in her case are not so compelling that they outweigh her conviction for a serious violent crime, her recent sentencing in [REDACTED] 2016, and her repeated, inaccurate statements under penalty of perjury that she had no criminal history. Therefore, based on the evidence as a whole, we cannot find that the Applicant merits adjustment of status in the exercise of discretion. 8 C.F.R. § 245.24(d)(11).

III. CONCLUSION

In these 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 R-B-M-*, ID# 10297 (AAO Oct. 20, 2016)