



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

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

MATTER OF R-A-M-

DATE: SEPT. 23, 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, concluding that a favorable exercise of discretion was not warranted because the adverse factors in the Applicant's case outweighed the positive factors. The Director determined that the Applicant's adjustment of status was not warranted as a matter of discretion.

The matter is now before us on appeal. The Applicant submits a brief and additional evidence. The Applicant claims that the Director gave too much weight to the Applicant's juvenile record, too little weight to the positive equities, and that her decision to deny the application was an abuse of discretion.

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

I. LAW

Section 245(m)(1) of the Act states:

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 –

.....

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(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 is a citizen of Nicaragua. The record reflects that the Applicant's father abused the Applicant and his mother, and that his mother died when the Applicant was [redacted] years old. The Applicant's sister was subsequently appointed as the Applicant's legal guardian, and the Applicant entered the United States as an A-2 nonimmigrant at the age of [redacted] with his sister's family. The record shows that the Applicant was then abused by his brother-in-law, and the Applicant's sister filed a Form I-918, Petition for U Nonimmigrant Status (U petition) on his behalf. The Director approved the U petition, and the Applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application).

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, United States 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). 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 before the Director showed that the Applicant has a six-year record of juvenile offenses. When the Applicant was [REDACTED] the juvenile court ordered that he be committed to a secure detention facility until the age of [REDACTED] or until discharged. The Applicant was released into transitional housing on [REDACTED] 2015. On [REDACTED] 2015, when the Applicant was [REDACTED] years old, the Youth Parole Authority discharged him and terminated his custody with Juvenile Justice Services.

During the adjudication of the appeal, we issued a request for evidence (RFE), seeking evidence of the Applicant's continuing efforts at rehabilitation since his discharge from juvenile detention. In response, the Applicant submits an additional personal statement, updated letters of support, and updated photographs of his tattoo removal.

We have reviewed all of the evidence in the record. The Applicant has overcome the Director's concerns, and we will sustain the appeal for the following reasons.

A. Adverse Factors

The record shows that the Applicant has the following history with the Utah juvenile justice system:

- On [REDACTED] 2008, the juvenile court held a hearing on five Class B misdemeanor incidents involving the Applicant: shoplifting (\$299 or less); interfering with arrest or detention; assault with substantial risk of bodily injury; and two counts of possessing a dangerous weapon at school. The Applicant admitted to shoplifting and one charge of possessing a dangerous weapon at school. The remaining charges were dismissed. The court ordered the Applicant to complete 50 hours of community service, participate in the mentor program, write a letter of apology, and have no contact with certain individuals, among other conditions.
- On [REDACTED] 2012, the juvenile court arraigned the Applicant for two counts of concealing a dangerous weapon, Class B misdemeanors, and ordered the Applicant detained. The court reconvened and arraigned the Applicant on additional charges of possession of a stolen vehicle, a second degree felony, marijuana possession or use, a Class C misdemeanor, and false ID, a Class C misdemeanor. The Applicant admitted to all the charges. The court ordered the Applicant to complete 75 hours of community service and 60 days of detention, as well as pay fines and restitution. The Applicant was also ordered to participate in the court work program, the drug and alcohol evaluation program, and to complete any recommended counseling services. The court suspended the Applicant's driver's license and ordered him to have no contact with known gang members.
- On [REDACTED] 2012, the juvenile court held a contempt of probation hearing and arraigned the Applicant for joyriding as a driver (with return after 24 hours), a third degree felony, two Class B misdemeanors, reckless driving and leaving an accident scene (with damage), and two Class C misdemeanors, unlicensed driver age 16 or over, and False ID. The court ordered the Applicant detained. The court subsequently accepted the Applicant's admission

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to the false identification charge, and dismissed the remaining charges pursuant to a plea negotiation. After a period of detention, the court released the Applicant to live with his sister/guardian, and to pay fines and restitution.

- On [REDACTED] 2012, the juvenile court arraigned the Applicant on two counts of first degree felony shooting from a vehicle/highway in the direction of a person, five counts of second degree felony shooting from a vehicle/highway in the direction of a person, and riot resulting in injury/loss, a third degree felony, and ordered the Applicant detained and his probation continued. The juvenile court accepted the Applicant's admission of two counts of first degree felony shooting from a vehicle/highway in the direction of a person, one count of second degree felony shooting from a vehicle/highway in the direction of a person, and riot resulting in injury/loss, a third degree felony, and dismissed the remaining charges. The court terminated probation for a previous offense, and ordered the Applicant committed to secure confinement in the custody of the juvenile justice system until the age of 21 or until legally discharged, and to pay restitution.
- On [REDACTED] 2015, the Youth Parole Authority authorized the Applicant to be paroled in a trial placement with his adoptive grandparents, J-C- and D-C-.¹
- On [REDACTED] 2015, the Youth Parole Authority discharged the Applicant and terminated him from the custody of Juvenile Justice Services.

As noted by the Director, the Applicant misled law enforcement officers when he was arrested on multiple occasions as a juvenile, including denying his gang membership, stealing a car, and shooting a [REDACTED] year-old girl in the back. The Applicant's lack of candor with the police, juvenile history, admitted gang membership, and admission to committing serious violent crimes are significant negative factors.

The Director also found as negative factors the Applicant's lack of candor on his U petition, where he indicated that he had never been arrested, cited, charged, detained or convicted of a criminal offense, and did not admit to his gang membership. The record shows that the Applicant's sister signed the U petition on the Applicant's behalf when he was [REDACTED] years old. We do not weigh her lack of candor as a negative factor. The Director also weighed negatively the fact that the Applicant disclosed his juvenile record in summary form when he filed his U adjustment application, and did not submit complete records until he responded to her notice of intent to deny (NOID). As the Applicant disclosed his juvenile record when he filed the U adjustment application, and submitted arrest reports and explanatory materials in response to the Director's NOID, the Applicant did not lack candor in his U adjustment application to USCIS.

B. Favorable Factors

The Director considered as positive equities the Applicant's family ties in the United States, length of residence, pursuit of education, evidence of rehabilitation, and letters from the [REDACTED] [REDACTED] his adoptive grandfather, employers, staff, teachers, volunteers, and colleagues. The

¹ Initials are used in this decision to protect the identities of the individuals.

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Director stated that the Applicant's traumatic past and cooperation with law enforcement in the investigation and prosecution of the qualifying crime underlying his U petition were humanitarian factors in the case.

In his personal declarations, the Applicant explained that where he grew up in Nicaragua and in the neighborhood where he lived in Utah, gang culture was prevalent and gang identification seemed to him, at the time, like a normal part of his life. He admits his mistakes, and expresses remorse for his criminal behavior which hurt his family, the girl who he shot, and the community. He states that he made many positive connections when he was in detention, that these law-abiding citizens are members of his current community, and that he is working with law enforcement agencies to fight criminal and gang activity.

The evidence submitted in support of the Applicant includes, in part, letters from the following persons: [REDACTED] the [REDACTED] who states that the Applicant has been a valuable resource to law enforcement; [REDACTED] Parole Officer, who certifies that the Applicant completed drug and alcohol therapy and continued in counseling, successfully passing screenings after his release from detention; [REDACTED] LCSW, who states that the Applicant demonstrated excellent progress in addressing relationship and substance abuse issues, completing treatment approximately one year ago; D-C-, of [REDACTED] the Applicant's adoptive grandfather, who states that he has known the Applicant for four years, trusts and respects him completely, and attests to his character, work ethic, and caring nature;² W-A-, who states that in five years of volunteering, "[the Applicant] is the finest young man I have had the privilege to know," and that in the 18 months since his release, the Applicant has maintained positive relationships and volunteers at mentor functions; and [REDACTED] Special Education Teacher, [REDACTED] who states that the Applicant has exhibited "an amazing transformation," and describes him as a man of responsibility, compassion, empathy, and an inspiration to others.

C. Weighing the Factors as an Exercise of Discretion

On appeal, the Applicant claims that the Director erred in treating the Applicant's juvenile offenses as serious violent crimes and states that he does not have a criminal history. In *Matter of Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the Board of Immigration Appeals (the Board) stated, "[w]e 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." *Devison-Charles* at 1365; *see also Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). The Board added, "[w]e have also held that the standards established by Congress, as embodied in the FJDA (Federal Juvenile Delinquency Act), govern whether an offense is to be considered an act of delinquency or a crime." *Devison-Charles* at 1365. The FJDA defines a

² The record reflects that the Applicant has worked for D-C-, and that the Applicant and his wife lived with D-C- and J-C- during his transitional housing.

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“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.” *Ramirez-Rivero* at 137. While we agree that the Applicant’s delinquency offenses are not criminal convictions, the Director appropriately considered the Applicant’s juvenile adjudications as negative factors in the exercise of discretion. *Wallace v. Gonzales*, 463 F.3d 135 (2d Cir. 2006); see 8 C.F.R. § 245.24(d)(11).

The unfavorable factors are the Applicant’s commission of serious and violent offenses as a juvenile from the time he was [REDACTED] until he was [REDACTED] years old. The most serious offenses occurred when the Applicant was in U nonimmigrant status.

The favorable factors include the Applicant’s rehabilitation, expression of remorse, lack of a criminal record, length of time in the United States, family ties in the United States, and volunteer activities with law enforcement agencies and the juvenile delinquent population. Other favorable factors include the Applicant’s positive achievements while in detention, including his high school graduation; enrollment in a course in mortuary school; work with troubled youth; completion of alcohol and drug rehabilitation; commitment from a U.S. citizen to support his attendance at mortuary school; assistance to the [REDACTED] to combat gang violence; removal of gang tattoos; and letters from over 50 individuals, including senior professionals and volunteers at the [REDACTED] who state that the Applicant serves as an inspiration and role model to other boys, and is a “textbook example of successful rehabilitation.” The Applicant is a national essay contest winner, is married to a U.S. citizen who is expecting their first child, and his probation and detention were terminated early. Since his release from detention, he has continued to maintain personal connections with respected citizens, and submits letters from members of the business community who show that he 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. The Applicant has demonstrated that his adjustment of status is warranted for humanitarian reasons, for family unity, or is otherwise in the public interest. We withdraw the Director’s decision to the contrary.

III. CONCLUSION

In these proceedings, it is the Applicant’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of R-A-M-*, ID# 62272 (AAO Sept. 23, 2016)