U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M-Z-

DATE: SEPT. 27, 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 (U adjustment application), concluding that the Applicant had not demonstrated that he was 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. He asserts that he has established his rehabilitation and that the favorable factors in his case outweigh the unfavorable factors, so his U adjustment application should be approved in the exercise of discretion.

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

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 his 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.* The 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 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 the Applicant's history of arrests and convictions is as follows:

- On or about 2009, at the age of he was arrested on suspicion of violating Cal. Bus. & Prof. Code section 25662(a), possession of alcoholic beverage by minor. The matter was "handled informally" and the Applicant was released.
- On 2010, he was arrested on suspicion of possession of marijuana for sale in violation of Cal. Health & Safety Code section 11359 and selling marijuana in violation of Cal. Health & Safety Code section 11360(a). On 2010, he pled guilty to misdemeanor possession of more than 28.5 grams but less than 30 grams of marijuana in violation of Cal. Health & Safety Code section 11357(c). He was sentenced to 33 days in custody with credit for 33 days served, 3 years of probation, and a fine.
- On 2011, he was arrested on suspicion of burglary in violation of Cal. Penal Code section 459. On 2011, he pled guilty to misdemeanor burglary and was sentenced to 59 days in custody with credit for 27 days served, 36 months of probation, and fines.
- On 2012, the Applicant was charged with vandalism in violation of Cal. Penal Code section 594(b)(1) and trespassing in violation of Cal. Penal Code section 602(m) in relation to an incident that occurred from to 2012. On 2013, he was convicted of misdemeanor vandalism and sentenced to 45 days in a work release program, 36 months of probation, payment of restitution to the victim in the amount of $1370, and fines. The remaining charge was dismissed.
- On 2015, he was arrested on suspicion of driving under the influence of alcohol in violation of Cal. Vehicle Code section 23152(a) and driving with a blood alcohol percentage of 0.08 or more in violation of Cal. Vehicle Code section 23152(b). No charges were filed.

In an affidavit submitted with his U adjustment application, the Applicant stated that he has resided in the United States since he was a young child, attended school in this country, and considers himself an American. He indicated that he does not have a relationship with any family members in Germany and does not speak German well. The Applicant stated that the only family member with whom he has a relationship is his mother, who resides in the United States. He added that his mother would be unable to return to Germany with him because she suffers from a hereditary blood protein deficiency which causes blood clots and prevents her from traveling by airplane. With regard to his U nonimmigrant status, the Applicant explained that he was the victim of child abuse by the director of a boarding school he attended, and that he testified in the trial which led to conviction of that person. As for his own criminal history, the Applicant stated that he was convicted in 2010 for simple possession of marijuana, but had no other legal troubles since then.

The Applicant submitted a second affidavit in response to a notice of intent to deny (NOID) from the Director. The Applicant recounted that he came to the United States with his parents in 1998, when he was years old, and that his father left the family to return to Germany when the Applicant was years old. He stated that his father did not provide financial support after leaving, but instead caused financial strain by filing a lawsuit against the Applicant's mother. The Applicant indicated

that he was angry at his father and lacked sufficient support from his mother, so he began to rebel. His mother responded by sending him to boarding school, where the director physically and emotionally abused the Applicant. The Applicant noted that he eventually left the boarding school, but had difficulty managing his anger and sadness related to his relationships with his parents and the abuse he experienced. He stated that this difficulty, combined with stress about his immigration status, resulted in poor decisions on his part. He recounted all of his arrests and stated that he regrets his past mistakes and learned from them. The Applicant noted that he began to succeed after receiving employment authorization through his U nonimmigrant status. He explained that he was promoted to a supervisory position at a solar energy company and later pursued a career as an electrician. He expressed his desire to become a U.S. citizen and to continue pursuing his career in this country. The Applicant acknowledged his failure to provide his full criminal history with his U adjustment application. He stated that he did not intentionally conceal information but instead believed that his attorney would provide all of the information.

In a statement submitted on appeal, the Applicant expresses remorse for his poor decisions and states that he has matured. He contends that he had trouble dealing with trauma as an adolescent, which contributed to his mistakes. He emphasizes that he has a strong work ethic and has succeeded professionally. The Applicant notes that he is working as an Apprentice Electrician, is pursuing certification as a Journeyman Electrician, and fears that a denial of his U adjustment application will cause him to lose his career. He also states that he has close ties to friends in the United States and no such ties to anyone in Germany. Additionally, the Applicant asserts that his mother relies on him for assistance because her leg was amputated when she was 17 years old due to a blood clot and she wears a prosthetic. He states that his mother cannot currently afford her medication and that he wants to help her pay for it by working in the United States.

On appeal, the Applicant submits a psychological evaluation from Ph.D., who reports that the Applicant's "past legal difficulties can be explained by the presence of emotional and/or psychological difficulties" relating to family dysfunction and traumatic experiences. explains that the Applicant reported that he was abandoned by his father, did not receive sufficient attention or support from his mother, and was abused at boarding school. According to the Applicant did not receive necessary psychological care to address these experiences, which led to emotional and behavioral difficulties including alcohol abuse, legal problems, and a suicide attempt and subsequent hospitalization. asserts that the Applicant is a person of good moral character and "has been able to correct the path he was once on and presently is a well-focused, self-sufficient individual who is not only law abiding but is productive in the community." concludes that the Applicant is rehabilitated and "presents no significant risk for future criminal activity."

The Applicant also submits on appeal a letter from Ph.D., who states that the Applicant attended three psychological services appointments between March 3 and March 30, 2016. indicates that, per the Applicant's report, the Applicant was neglected by his parents and

abused by his father,[1] resulting in distrust of authority, anxiety, trouble sleeping, and depression. states that the Applicant experienced legal troubles relating to possession of marijuana and his immigration status, which further contributed to his emotional difficulty, poor judgment, and "adjustment to life." According to the Applicant overcame his past mistakes to graduate from high school, attend two years in community college, and succeed in full-time employment. asserts that the Applicant "has the integrity and strength of character" to be responsible and to contribute positively to the United States.

In a letter submitted on appeal, the Applicant's mother states that abandonment by the Applicant's father, the divorce of his parents, and the abuse at boarding school were traumatic for the Applicant. She asserts that this trauma caused difficulty for the Applicant during his adolescence and led to severe depression. Also, she reports that the Applicant was subject to negative peer pressure at school. She states that the Applicant's immigration status negatively impacted the Applicant's goals of joining the Army and getting a driver's license, further contributing to his depression and related mistakes. The Applicant's mother claims that the Applicant has matured, taken responsibility for his mistakes, and regrets his past actions. She asserts that the Applicant is a person of good moral character and is dedicated to his career. Further, the Applicant's mother contends that the Applicant would suffer hardship if forced to return to Germany because he would lose his career as an electrician in the United States and would experience emotional difficulty upon separation from his mother and friends. Additionally, the Applicant's mother states that she suffers from a protein deficiency which causes life-threatening blood clots and other medical complications which led to the amputation of her leg. The Applicant's mother reports that she requires the Applicant's physical and financial assistance to manage her horse farm business.

The Applicant's former mathematics professor stated in a letter submitted with the U adjustment application that the Applicant was an excellent student. In response to the NOID, the Applicant provided numerous letters from family friends, all of whom stated that the Applicant is a responsible, respectful, and mature person who is dedicated to his family and his career. They asserted that he learned from his mistakes and made positive changes in his life. The writers indicated that the Applicant contributes to his community, is an important member of his family and groups of family friends, and should be permitted to remain in the United States. Also, the Applicant's former employer from stated in a letter that the Applicant was hardworking and helpful, and should become a U.S. citizen. Another former employer from also recommended the Applicant for citizenship, explaining that he is mature, responsible, and committed to his work.

---

[1] states that the Applicant was physically and emotionally abused by his father beginning at age and that the process of deporting the Applicant was "interrupted due to official recognition" of this abuse. The Applicant does not make such assertions in his own statements, but instead states that he had no contact with his father since his father abandoned him at age It is not clear whether confused the abuse of the Applicant by his boarding school director, for which the Applicant received U nonimmigrant status, with abuse by his father.

As additional supporting evidence, the Applicant provided his federal income tax returns from 2012 and 2014, pay stubs, receipts for his membership in the his resume, and his transcript from indicating that he completed 12 credits between 2010 and 2014.

A. Adverse Factors

The adverse factors in this case include the Applicant's five arrests and three convictions. His convictions for burglary and vandalism occurred while he held U nonimmigrant status. Additionally, the Applicant's 36-month probation for vandalism, which began on 2013, was scheduled to terminate on 2016, after he filed both his U adjustment application and the instant appeal. The recency of the Applicant's probation prevents him from establishing that he is fully rehabilitated at this time.

Furthermore, the Applicant did not provide full information about his criminal history with his U adjustment application. The Applicant stated in his sworn affidavit submitted with his U adjustment application, "My only criminal conviction was for simple possession of marijuana from 2010, when I was years old. . . . I have not had any problems with law enforcement since that time . . . ." This statement was not accurate. In response to the Director's NOID, the Applicant provided additional criminal history information. He also stated in an updated affidavit that he did not intentionally conceal his 2011 and 2012 arrests, but "mistakenly believed that [his] attorney had access to [his] criminal history and would provide . . . the necessary information and documentation." Confusion over the documentation his attorney would submit does not explain the Applicant's affirmative statement in his initial affidavit in which he declared under penalty of perjury that his "only criminal conviction" was his 2010 arrest for marijuana possession. The Applicant has not demonstrated that he was forthright about his criminal history, which weighs against a finding that he has taken responsibility and is rehabilitated.

B. Favorable and Mitigating Factors

Favorable factors in this case include the Applicant's residence in the United States since he was years old, his ties to his mother who also resides in California, and the support he has from friends. Also, the Applicant has explained that he does not have close family ties in his native country of Germany, is not familiar with the lifestyle there, and is not completely comfortable speaking German. Additionally, the Applicant has held full time employment, has received praise from his employers, and is pursuing an electrician's license. The record also reflects that the Applicant paid federal income taxes in 2012 and 2014. He also graduated from high school and attended community college. Further, the Applicant has expressed remorse for his past mistakes and has demonstrated dedication to his career.

We also consider as mitigating factors the facts that the Applicant had a difficult childhood in which he was abandoned by his father at a young age; lacked sufficient support and guidance from his mother, particularly while experiencing emotional and behavioral difficulties as a result of trauma;

was subjected to criminal abuse by the director of his boarding school; and did not receive psychological treatment which could have helped him address those difficulties. This is particularly evident in the fact that, per evidence in the record of proceedings relating to the Applicant's Form I-918, Petition for U Nonimmigrant Status (U petition), the Applicant was involuntarily committed to the on 2010, at the age of due to an assessment that he was a danger to himself following a threat to jump from a building. Furthermore, we acknowledge the assessments of the Applicant's psychologists that he is unlikely to engage in criminal behavior in the future.

Also, the Applicant's mother suffers from a blood clotting disorder and she has expressed that she needs his financial and physical assistance to maintain her business. The Applicant also claims that his mother cannot pay for her necessary medications without his help. However, we give this favorable factor little weight because the record contains insufficient evidence of the Applicant's mother's need for his support. Medical records for the Applicant's mother, submitted with his U petition, do not state that his mother requires assistance, and the Applicant has not submitted any updated medical records with his U adjustment application. The Applicant's mother has suffered from the same medical condition since before she arrived in the United States. Furthermore, the Applicant states that he lives alone, rather than with his mother, and evidence in the record of proceedings indicates that they live approximately two hours apart. In addition, the evidence indicates that his mother continues to manage her horse farm business while the Applicant pursues his career. Therefore, the evidence does not establish the extent of the Applicant's mother's need for assistance.

C. Weighing of the Factors as an Exercise of Discretion

The Applicant bears the burden of showing that discretion should be exercised in his favor in these proceedings. 8 C.F.R. § 245.24(d)(11). When viewed in their totality, the favorable factors in this case do not outweigh the unfavorable factors. The Applicant has resided in the United States since he was a young child and has close personal and professional ties to this country. He has also expressed remorse for his past mistakes and has worked to make positive changes in his life. We also acknowledge the several mitigating factors that contributed to the Applicant's behavioral difficulties, including family difficulties during his childhood and being the victim of criminal abuse at school as a teenager. We recognize that the Applicant's psychologists consider him unlikely to engage in future criminal activity.

However, although the Applicant claims that several difficult experiences in his childhood and adolescence contributed to his mistakes, and that he acted under negative peer pressure by friends from school, the only incident that occurred while he was an adolescent was a juvenile arrest for possession of alcohol. Otherwise, all of his criminal activity occurred while he was an adult. Most notably, his conviction for vandalism occurred when he was years old. Also, although the Applicant claims that he began to make positive changes in his life after he received work authorization and became employed at his pay stubs indicate that he was employed at that company before his arrest and conviction for vandalism. Therefore, the

evidence does not indicate that mitigating factors explain the Applicant's criminal history to the extent he claims. Furthermore, his most recent period of probation was scheduled to end in 2016, after he filed the instant appeal. Additionally, the Applicant was not forthright in his account of his criminal history. The recency of the Applicant's convictions and probation, combined with his inaccurate characterization and incomplete disclosure of his criminal history, outweigh the favorable factors in this case. Therefore, we cannot find that the Applicant is eligible for adjustment of status in the exercise of discretion.

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 A-M-Z-*, ID# 112697 (AAO Sept. 27, 2016)