



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

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

In Re: 9187788

Date: DEC. 21, 2020

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on her “U” nonimmigrant status as a victim of qualifying criminal activity. The Vermont Service Center Director denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and the matter is now before us on appeal. The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if they meet all other eligibility requirements and, “in the opinion” of USCIS, their “continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.” Section 245(m) of the Act. The Applicant’s burden includes establishing that discretion should be exercised in their favor. When making its discretionary determination, USCIS may take into account all relevant factors present in a case. 8 C.F.R. § 245.24(b)(6), (d)(11).

A favorable exercise of discretion to grant an applicant adjustment of status to that of an LPR is generally warranted in the absence of adverse factors and the presence of favorable ones. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970). Favorable factors include, but are not limited to, family unity, length of residence and employment in the United States while in a lawful status, community involvement, and good moral character. *Id.*; see also 1 *USCIS Policy Manual* E.8(C)(2), <https://www.uscis.gov/policy-manual> (providing guidance regarding adjudicative factors to consider in discretionary determinations). However, where adverse factors are present, the applicant should submit evidence establishing mitigating equities. See 8 C.F.R. § 245.24(d)(11) (stating that, “[w]here adverse factors are present, an applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate”)

II. ANALYSIS

The Applicant, a native and citizen of Mexico, entered the United States without inspection, admission, or parole in 2003. USCIS granted the Applicant U-1 nonimmigrant status from May 2013 to May 2017 as a victim of felonious assault who was helpful in the investigation of the crime. The Applicant timely filed this U adjustment application.

In her decision, the Director acknowledged the Applicant's positive equities: her two U.S. citizen children, one of whom suffers from a genetic disorder, employment, lengthy residence in the United States, and victimization and assistance to law enforcement. Nonetheless, the Director denied the U adjustment application, determining that the Applicant had not demonstrated that her adjustment of status to LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest because the unexplained discrepancies and lack of requested information about her mental health, which raised concerns for her safety and that of others, outweighed the positive factors in the case. The Applicant has not overcome this determination on appeal.

With her U adjustment application, the Applicant submitted the required Form I-693, Report of Medical Examination and Vaccination Record (medical examination). Within that form, the civil surgeon noted that the Applicant had bipolar disorder. The civil surgeon referred to a letter from a psychiatrist, also in the record, stating that the Applicant was "actively receiving treatment for a diagnosis of Bipolar I Disorder and . . . was depressed and experienced Posttraumatic Stress Disorder." The psychiatrist indicated that the Applicant experienced the following symptoms: increased startle reflex, nightmares regarding previous trauma, auditory and visual hallucinations, pressured/rapid speech, engaging in risky/impulsive behavior, periods of elation followed by severe depression lasting 1–3 weeks in length, irritability, feelings of hopelessness, suicidal ideation with attempts requiring psychiatric hospitalizations, insomnia, racing thoughts, inability to concentrate and complete tasks, and hypervigilance. The psychiatrist noted that the Applicant was "classified as having a chronic mental illness for which she need[ed] to continue her psychiatric medications to reduce impairment and prevent significant deterioration in important areas of functioning."

Based on this information, the Director issued a request for evidence (RFE) seeking, as relevant here, a new medical examination addressing the Applicant's mental illness, including the dates of diagnosis and her history of receiving any related services. In response to the RFE, the Applicant provided a written statement explaining that she no longer took medication for her mental illness because it was not necessary. She also provided a new medical examination that did not address her history of mental illness.

In her decision denying the U adjustment application, the Director noted the positive factors in the Applicant's case that we noted above. However, the Director concluded that the Applicant had not demonstrated that those factors outweighed the negative factors present in her case, in pertinent part, because her documented diagnosis from the initial medical examination raised concerns for her safety and that of others, and the Applicant's statement that she no longer needed to seek treatment for her conditions, without corroborating evidence from a qualified medical professional, was insufficient material to address those concerns.

On appeal, the Applicant provides an additional written statement stating that her life circumstances have changed significantly and that the external factors causing her depressive symptoms have been addressed or eliminated. The Applicant states that she no longer takes medication or participates in psychotherapy, but remains under the care of a medical doctor, participates in a support group, and is no longer a risk to herself. The Applicant additionally provides a letter from her physician stating that she has been a patient at his facility since January 2019, is under his care, and is not taking any psychiatric medications or seeing a psychiatrist.

Although we acknowledge this evidence, upon *de novo* review, it is insufficient to address the legitimate concerns raised by the Director, given the severity of the symptoms described in the initial medical examination. Regarding the Applicant's Bipolar I Disorder, although the Director explained the importance of corroborating evidence from a medical professional that psychiatric treatment and medication were no longer needed, the Applicant has not provided this evidence. Notably, the letter from the Applicant's physician does not address the Applicant's history of Bipolar I Disorder or explain why treatment is no longer needed. In addition, the Applicant has not provided further evidence from the civil surgeon who conducted the medical examinations explaining the decision to remove the information regarding the Applicant's diagnosed mental disorder from the second medical examination, which is significant, given the psychiatrist's description of the condition as a "chronic mental illness."

The Director also highlighted discrepancies relating to the Applicant's history with alcohol, because although the Applicant stated with her U adjustment application that she never had a problem with alcohol abuse, she submitted, with her U petition, a letter from her sponsor in an Alcoholics Anonymous support group addressing her progress with her alcoholism. In her RFE, the Director additionally requested that the new medical examination address her past or present alcoholism. In response, the Applicant explained that she was not an alcoholic, and that the support group was also a recovery program for issues unrelated to alcohol. On appeal, the Applicant provides an updated letter from the coordinator of the support group explaining that the group also supports individuals like the Applicant who are not alcoholics. Also on appeal, the Applicant states that her sponsor mischaracterized her relationship with alcohol within his previous letter. Although the updated letter from the support group coordinator addresses the discrepancy and the record indicates that the Applicant remains involved with that group and dedicated to improving her ability to manage daily life situations, the Applicant has still not provided an updated medical examination that addresses her past or present alcoholism, as requested.

The Applicant posits that her history of mental illness and possible alcoholism should not be afforded negative discretionary weight and that her positive and mitigating equities outweigh the adverse factors in her case. However, it is the Applicant's burden to demonstrate that she merits a favorable exercise of discretion. Although we acknowledge the Applicant's positive equities, due to the serious nature of the symptoms the Applicant has experienced—including auditory and visual hallucinations, engaging in risky/impulsive behavior, and suicidal ideation with attempts requiring psychiatric hospitalizations, which the Director correctly determined indicated that she posed a risk to the safety of herself and others, and her failure to provide certain requested evidence explaining her condition—the Applicant has not demonstrated that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that she

warrants a favorable exercise of our discretion. Consequently, the Applicant has not demonstrated her eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.