U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21518579

Date: APR. 20, 2022

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. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (adjustment application), concluding that the positive equities do not outweigh the negative factors in the case. The matter is now before us on appeal. Upon *de novo* review, as explained below, 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; *see also* 8 C.F.R. § 245.24(b)(6). The Applicant bears the burden of proof to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This burden includes establishing that discretion should be exercised in their favor, and USCIS may take into account all relevant factors in making its discretionary determination. 8 C.F.R. § 245.24(d)(11).

A favorable exercise of discretion to grant an applicant adjustment of status to that of LPR is generally warranted in the absence of adverse factors and presence of favorable factors. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970). Favorable factors include, but are not limited to, family unity, length of residence in the United States, employment, 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) ("[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 filed her adjustment application in May of 2020, indicating she had been arrested in [redacted] 2016 and charged with driving with no license, death or serious injury, and vehicular homicide. She stated the charge of vehicular homicide was dropped, she entered a plea of no contest to the other charge, and she was sentenced to 11 months and 29 days in jail. She submitted, among other things, copies of her arrest and court records.

The Director issued a request for evidence (RFE) seeking, in part, certified copies of the actual arresting officer's report, evidence of completion of the sentence imposed, and any additional information for USCIS to consider in its determination whether a favorable exercise of discretion is appropriate. The Applicant responded to the RFE and submitted additional evidence.

The Director denied the adjustment application as a matter of discretion. The Director discussed that the Applicant's automobile accident resulted in the death of the Applicant's five-year-old daughter. The Director stated that the record indicated the Applicant was driving with a suspended license and was driving recklessly at excessive speeds while on medication and with alcohol in her system, and that her daughter may not have been in a child restraint seat or wearing a seat belt, contributing to her death. The Director indicated that although the Applicant was stricken with grief and wanted to be with her family in Mexico, she left the United States while she was facing possible charges for the death of her daughter and before being granted approval of Advance Parole. The Director found that the Applicant paid the imposed fines to the state of Florida, but did not submit documentation that she completed her sentence of 11 months and 29 days in jail. The Director considered the Applicant's criminal history and the resulting death to her child to be a serious negative factor. The Director also noted that the Applicant had immigration violations, including reentering the United States illegally three times.[1] The Director acknowledged the favorable equities in the case, such as the Applicant's assistance with law enforcement as a victim of domestic violence and her desire for her younger son to get a good education in the United States, but noted that her sons were 16 and 20 years old and that she did not provide evidence that she financially supports her 16-year-old son or is actively involved in his life. The Director concluded that the Applicant did not provide sufficient evidence to establish that her adjustment of status was warranted on humanitarian grounds, to ensure family unity, or was otherwise in the public interest.

On appeal, the Applicant argues that the record lacks any evidence that contradicts the evidence that she merits a favorable exercise of discretion, such as letters attesting to her good moral character, evidence of cohabitation with her family, and evidence of her mental health issues. She further argues that her conviction does not constitute a crime involving moral turpitude and does not trigger inadmissibility. In addition, she contends that the Director erroneously relied on the USCIS Policy Manual factors for discretionary adjustment of status decisions rather than the factors listed in 8 C.F.R. § 245.24(d), and that the Director overlooked the legislative purpose of the U-nonimmigrant status program which weighs heavily in the Applicant's favor. She submits new evidence on appeal, including, but not limited to, court records, a copy of her Parole Approval Notice from USCIS, and

[1] The Applicant does not contest this finding on appeal; however, it is unclear from the record whether the Applicant illegally reentered the United States two or three times.

unpublished decisions from an Immigration Judge and the Board of Immigration Appeals pertaining to another individual.

Upon a careful review of the entire record, including the new evidence submitted on appeal, we do not find the Applicant has met her burden of establishing that she warrants a positive exercise of discretion. In considering an applicant's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offense(s). *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978). Moreover, an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation. *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991); *Matter of Marin*, 16 I&N Dec. at 588.

In this case, in 2016, while in U nonimmigrant status, the Applicant was convicted of a third-degree felony for operating a motor vehicle with a suspended driver's license, causing the death of her daughter, and was imprisoned for just under one year.[2] As the Director found, and the Applicant does not contest, she was driving at excessive speeds while on medication and with alcohol in her system. Although she attests that the tragedy and loss her family has experienced has impacted them deeply, the Applicant does not address the circumstances of her arrest and conviction or express remorse for her actions. We therefore do not find that the Applicant has taken full responsibility for her actions and, as such, has not presented sufficient evidence of genuine rehabilitation.[3] Regardless of whether the crime was one involving moral turpitude which may or may not trigger inadmissibility, considering the nature, recency, and seriousness of the offense, and the lack of genuine rehabilitation, we find the Applicant's conviction to be a serious negative factor in our discretionary determination. We further find that the circumstances that led to her conviction and her repeated immigration violations show a disregard for the laws of the United States and pose a threat to public safety. *See, e.g., Matter of Siniaiskas*, 27 I&N Dec. 207, 207 (BIA 2018) (finding that driving under the influence (DUI) is a significant adverse consideration in determining an individual's danger to the community in bond proceedings); *see also Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (BIA 2019) (discussing the "reckless and dangerous nature of the crime of DUI").

With respect to positive and mitigating factors, the record shows that the Applicant has family ties in the United States, including her mother, her husband, and their four children. We also acknowledge that she assisted law enforcement in the prosecution of her ex-boyfriend for domestic violence[4] and that she has sought medical care for depression. In addition, letters of support in the record attest to her good moral character; however, we accord them limited weight considering they make no mention

[2] The Applicant was convicted of violating Florida Statutes Annotated § 322.34(6)(b) which states:

> Any person who operates a motor vehicle . . . [w]hile his or her driver license or driving privilege is canceled, suspended, or revoked pursuant to s. 316.655, s. 322.26(8), s. 322.27(2), or s. 322.28(2) or (4), and who by careless or negligent operation of the motor vehicle causes the death of or serious bodily injury to another human being commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

[3] The Applicant submits court documents showing that judgment has been satisfied and discharged, and that the case is closed. We note, however, that there is no documentation addressing the conditions, if any, of her release from custody.

[4] In his appeal brief, counsel appears to criticize the Director's description of the perpetrator as the Applicant's ex-boyfriend rather than as the father of her children. However, the Applicant described the perpetrator as her ex-boyfriend, stating in her affidavit that she "was the victim of a violent attack at the hands of [her] ex-boyfriend" and that she "suffered severe physical and mental abuse by [her] ex-boyfriend."

of her felony conviction and, thus, it is unclear whether the declarants were aware of the Applicant's criminal history.

As stated above, it is the Applicant's burden of establishing that a favorable exercise of discretion is warranted. Here, considering the totality of the evidence, that burden has not been met. The circumstances surrounding the Applicant's felony conviction, including driving with a suspended license, driving recklessly and at high speed, driving with alcohol in her system, and causing the death of her daughter, as well as her immigration violations, and lack of evidence of genuine rehabilitation show problematic and troublesome behavior. The Applicant has not demonstrated that granting her application for adjustment of status is warranted as a matter of discretion on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. The application will remain denied.[5]

ORDER: The appeal is dismissed.

[5] To the extent the Applicant argues that the Director unlawfully relied on the USCIS Policy Manual which, according to the Applicant, violates the Administrative Procedure Act's (APA) rulemaking requirements, 8 C.F.R. § 245.24(i)(2) makes clear that USCIS has sole jurisdiction to approve or deny a U adjustment application in the exercise of its discretion and evidence relating to discretion is set forth in 8 C.F.R. § 245.24(d)(11). Administrative agencies have the authority to create general policy statements and provide clarification and information for the public based on applicable regulations. *See generally Am. Trucking Associations, Inc. v. I.C.C.*, 659 F.2d 452, 462 (5th Cir. 1981) (the APA excepts "general statements of policy" from the rulemaking requirements).