U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20580190

Date: MAR. 3, 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 his derivative "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 (U adjustment application), and the matter is now before us on appeal. The Administrative Appeals Office reviews the questions in this matter *de novo*. *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 bears the burden of establishing their eligibility, section 291 of the Act, 8 U.S.C. § 1361, and must do so by a preponderance of the evidence. *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(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 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* 7 *USCIS Policy Manual* A.10(B)(2), https://www.uscis.gov/policy-manual (providing guidance regarding adjudicative factors to consider in discretionary adjustment of status determinations). However, where adverse factors are present, the applicant may submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.24(d)(11) (providing 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 Guatemala, last entered the United States without inspection, admission, or parole in May 2007. In August 2017, USCIS granted the Applicant U-2 status as a spouse of a victim of a qualifying criminal activity under section 245(m) of the Act. The Applicant timely filed the instant U adjustment application in October 2018. The Director denied the application, determining that the Applicant had not demonstrated that his adjustment of status to that of an LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest. The Director concluded that the Applicant's adverse factors outweighed the favorable and mitigating factors such that discretion should not be exercised in his favor. The Applicant has not overcome this determination on appeal.

A. Favorable and Mitigating Factors

The Applicant is 32 years old and has lived in the United States for approximately 15 years. The Director acknowledged the favorable and mitigating factors present in the Applicant's case: his lengthy residence, property ownership, and history of paying taxes in the United States; his family ties here, namely his spouse whom he married in 2013, and his four U.S. citizen children; and letters of support attesting to his work ethic and dedication to his family, his spouse's emotional and financial reliance on him, and the assistance he provided to a neighbor after he experienced a house fire. In his statements, the Applicant indicated he has learned from his past incidents with his spouse; he has improved his communication with his family and respects them more than before; he and his spouse work together every day to be better for their kids, whom they love and care for; and he works hard to provide for his spouse and kids. On appeal, the Applicant submits additional police reports and an updated statement from his spouse, and asserts the record shows his case merits a favorable exercise of discretion.

B. Adverse Factors

The Applicant's primary adverse factor is his criminal history, particularly his 2018 convictions while in U status, and the evidence in the record related to multiple domestic disputes from 2013 to 2018. In [redacted] 2018, the Applicant was arrested and charged with operating a vehicle while intoxicated endangering a person, failure to remain at scene of accident bodily injury, operating vehicle with alcohol concentration equivalent to at least .08 but less than .15, operating a motor vehicle without financial responsibility, learners permit violation, and disregarding stop sign in violation of the Indiana Code sections 9-30-5-2(a)(b), 9-26-1-1.1(a)(2), 9-30-5-1(a), 9-25-8-2, 9-24-7-4, and 9-21-8-32. In [redacted] 2018, he was found guilty of operating a vehicle while intoxicated endangering a person, sentenced to 300 days in jail suspended, and ordered to pay the victim $500 and attend an alcohol countermeasures program which he completed in 2019. In [redacted] 2018, the Applicant was arrested and charged with battery resulting in bodily injury and disorderly conduct in violation of Indiana Code sections 35-42-2-1(c) and 35-45-1-3(a)(1). He was found guilty of disorderly conduct and sentenced to 30 days in jail.

In [redacted] 2013, the Applicant was arrested and charged with domestic battery – committed in presence of child less than 16 years, in violation of the Indiana Code section 35-42-2-1.3(b)(2). On [redacted] 2013, an order of protection was issued against the Applicant and the order expired on [redacted] 2013.

The submitted evidence reflects that the State of Indiana filed a motion to dismiss on [redacted] 2013. The police reports submitted on appeal also reflect that law enforcement was dispatched to the Applicant's and his spouse's residence due to domestic disputes on [redacted] 2014; [redacted] 2014; [redacted] 2015; [redacted] 2015; [redacted] 2016; and [redacted] 2018.

In 2010, the Applicant was arrested for operating a motor vehicle without ever receiving a driver's license in violation of the Indiana Code section 9-24-18-1(1)(a). He was found guilty and ordered to pay associated fees and court costs. In 2012, he was arrested for operating a motor vehicle without ever receiving a driver's license, operating a motor vehicle without financial responsibility, and speeding, in violation of the Indiana Code sections 9-24-18-1(1)(a), 9-25-8-2(a)(1), and 9-21-5-2. In 2013, he was found guilty of operating a motor vehicle without ever receiving a driver's license, sentenced to 60 days in jail suspended, and ordered to complete 40 hours of community service.

The Director concluded that the favorable and mitigating factors in the Applicant's case did not outweigh the adverse factors, specifically determining that the Applicant's arrest record and prior immigration violations, such as entering the United States unlawfully in 2007, are considered serious adverse factors. The Director noted that the Applicant was arrested on several occasions, he did not provide the related arrest reports, and USCIS was unable to fully evaluate the circumstances and underlying conduct related to those arrests. The Director acknowledged the submitted evidence showing the Applicant completed a substance abuse program in 2019 and noted that while rehabilitation is a favorable factor, his attendance at the program was court ordered and therefore held limited weight in the discretionary analysis. The Director also acknowledged that the Applicant provided statements describing the events and behavior that led to his arrests. However, the Director accorded limited weight to these statements because the Applicant did not indicate he was remorseful or that he has taken responsibility for his actions, and further, he failed to submit the requested police reports to corroborate his claims.

On appeal, the Applicant submits additional police reports and an updated statement from his spouse, and argues that the evidence demonstrates he merits a favorable exercise of discretion. He asserts that the police reports show that he was not the aggressor in the frequent disputes between him and his spouse, he was often the victim of physical attacks by his spouse, and he tried to de-escalate any domestic dispute. The Applicant contends that the spouse's updated statement on appeal explains that she has suffered from mental illness, including depression, panic attacks, and other emotional issues; this is the cause for her frequent outbursts where the police were involved; the police reports corroborate the fact that the Applicant was not the aggressor but rather the victim; and he is a very good husband and father. The Applicant further argues that the [redacted] 2013 domestic battery charge was dismissed because he was innocent as corroborated by his spouse. Concerning the [redacted] 2018 arrest for battery resulting in bodily injury and disorderly conduct, the Applicant refers to the redacted police report provided on appeal and asserts that he was a bystander of a dispute between his brother and another person, and the case did not result in any criminal conviction. He contends that USCIS erred in weighing these two arrests against him as adverse factors.

C. A Favorable Exercise of Discretion is Not Warranted Based on Humanitarian Grounds, to Ensure Family Unity, or in the Public Interest

The Applicant bears the burden of establishing that he merits a favorable exercise of discretion on humanitarian grounds, to ensure family unity, or as otherwise in the public interest. 8 C.F.R. § 245.45(d)(11). USCIS may take into account all relevant factors in making its discretionary determination. Sections 245(m) and 291 of the Act; 8 C.F.R. § 245.24(d)(11). Upon *de novo* review of the record, the Applicant has not established by a preponderance of the evidence that he merits a favorable exercise of discretion. We have considered the favorable factors in this case, including the Applicant's lengthy residence in the United States; property, employment, and family ties here; the support he provides to his spouse and children; and his history of paying taxes. However, even considering these factors, the Applicant has not demonstrated that he merits a favorable exercise of discretion to adjust his status to that of an LPR due to his recent and serious criminal conduct.

In considering an Applicant's criminal record in the exercise of discretion, we consider multiple factors including the "nature, recency, and seriousness" of the crimes. *Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978). In this case, most recently and while he maintained U nonimmigrant status, the Applicant was arrested and convicted for driving while under the influence of alcohol. Although we acknowledge the evidence reflecting the Applicant's compliance with his 2018 sentence for operating a vehicle while intoxicated endangering a person and his previously submitted statement explaining the circumstances of the accident, driving under the influence of alcohol is both a serious crime and a significant adverse factor relevant to our consideration of whether the Applicant warrants a favorable exercise of our discretion. *See Matter of Siniaiskas*, 27 I&N Dec. 207, 207 (BIA 2018) (finding DUI a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *see also Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (discussing the "reckless and dangerous nature of the crime of DUI"). Concerning the Applicant's [redacted] 2018 arrest for battery resulting in bodily injury and disorderly conduct, while he asserts on appeal that he was a bystander of a dispute between his brother and another person and the case did not result in any criminal conviction, the record reflects that he was found guilty of disorderly conduct and sentenced to 30 days in jail. Like the DUI, these criminal actions occurred while the Applicant was in U nonimmigrant status, which is an additional serious negative factor.

Further, even though none resulted in a conviction, the record reflects law enforcement was dispatched to the Applicant's and his spouse's residence due to domestic dispute incidents on multiple occasions from 2013 to 2018, including in [redacted] 2013, when the Applicant was arrested and charged with domestic battery – committed in presence of child less than 16 years. We first note that regardless of whether the misconduct resulted in a charge or conviction, it is appropriate for us to consider the factual information contained in police reports, as all relevant factors concerning an arrest and conviction should be taken into account in exercising our discretion. *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988). Moreover, the fact that the Applicant was not charged or convicted for the behavior reflected in the police reports does not equate with a finding that the offenses or associated behavior in question did not, in fact, occur and USCIS may consider behavior and criminal conduct that does not result in a conviction. *See* 8 C.F.R. § 245.24(d)(11) (providing that USCIS "will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of" various offenses); *see also Matter of Thomas*, 21 I&N Dec. 20, 23-24 (BIA 1995) (holding that evidence of criminal conduct that has not culminated in a final conviction may nonetheless be considered in discretionary determinations). As the misconduct associated with these police reports was violent in nature and classified as related to domestic battery or domestic disputes, we consider it to be especially serious. Though the Applicant claims on appeal that the police reports show that he was not the aggressor in the frequent disputes between him and his spouse and he tried to de-escalate any domestic dispute, the evidence does not support his assertions. For example, the Applicant told police during the [redacted] 2013 incident that he got mad and grabbed his spouse's shirt during an argument, and during the [redacted] 2015 incident, the Applicant grabbed his spouse and pushed her onto the bed because she was upset during an argument, she picked up an electric heater, and she acted like she was going to throw it at him. We further note that the police reports contain redacted information and therefore we are unable to fully understand the Applicant's conduct during each incident that law enforcement was dispatched to his residence due to domestic disputes.

Ultimately, it is the Applicant's burden to establish that he warrants adjustment of status to that of an LPR as a matter of discretion. There is insufficient evidence to establish that the Applicant's arrests and convictions should not be considered as adverse factors in his case or, alternatively, that lesser weight should be accorded to such evidence. Thus, considering both the recency, length, and serious nature of the Applicant's criminal history, notably the convictions that occurred in 2018 and while he maintained U nonimmigrant status, the adverse factors in the case continue to outweigh the favorable and mitigating factors. Accordingly, the Applicant has not established by a preponderance of the evidence that he warrants a favorable exercise of discretion and he remains ineligible for adjustment of status under section 245(m) of the Act.

ORDER: The appeal is dismissed.