



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

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

In Re: 20680824

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. On appeal, the Applicant submits a brief and additional evidence. 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 remand the matter to the Director for the issuance of a new decision.

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 Mexico, last entered the United States without inspection, admission, or parole in September 2002. In September 2015, USCIS granted the Applicant U-3 status as a child of a victim of qualifying criminal activity. The Applicant timely filed the instant U adjustment application in June 2019. 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, specifically noting the Applicant’s criminal record and finding that because he did not provide requested police reports, USCIS was unable to fully evaluate the circumstances and underlying conduct related to his 2010 arrest. With his appeal, the Applicant submits additional evidence, to include [REDACTED] Police Department investigation reports related to his 2010 arrest, which occurred when he was 14 years old; an updated letter from the Applicant’s mother, the U-1 petitioner, describing her financial, emotional, and physical reliance on the Applicant; and medical, financial, and employment documentation.

As the Applicant has provided new evidence that the Director has not had the opportunity to review, we will remand the matter for consideration of this evidence in the first instance, and for a determination of whether the Applicant warrants a favorable exercise of discretion and is otherwise eligible to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The decision of the Director is withdrawn. The matter is remanded to the Director for the issuance of a new decision consistent with the foregoing analysis.