In Re: 18077621

Date: MARCH 4, 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 (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 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's daughter filed a Form I-918 Supplement A, Petition for Qualifying Member of U-1 Nonimmigrant, on the Applicant's behalf, which USCIS approved, according her derivative U-4 nonimmigrant status from October 2014 to September 2018. In May 2018, she filed the instant U adjustment application. The Director denied the Applicant's U adjustment application as a matter of discretion, concluding that the adverse factors in her case outweighed the positive and mitigating equities. Specifically, the Director concluded that the Applicant's criminal history, which occurred while she maintained U nonimmigrant status, posed serious public safety concerns such that the Applicant had not demonstrated that her 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 Applicant has not overcome the Director's determination on appeal.

A. Adverse Factors

The Applicant's primary adverse factor is her criminal history, which includes: (1) a [redacted] 2014 arrest for domestic assault and disorderly conduct in violation of sections 609.2242 and 609.72.1 of the Minnesota Statutes Annotated (Minn. Stat. Ann.) respectively, which resulted in the issuance of a domestic abuse no-contact order, pursuant to section 629.75 of the Minn. Stat. Ann., a [redacted] 2016 conviction for disorderly conduct, imposition of a 30-day jail sentence, and one year of supervised probation, including prohibition of alcohol, chemical/substance testing, and participation in a chemical dependency evaluation; (2) a [redacted] 2015 arrest for violation of the domestic abuse no-contact order; (3) an [redacted] 2018 conviction for driving while impaired (DWI) in violation of section 169A.20 of the Minn. Stat. Ann., for which the Applicant was sentenced to two days of confinement, two years' probation, and participation in a chemical dependency evaluation; and (4) an [redacted] 2018 arrest for domestic assault and disorderly conduct in violation of sections 609.2242 and 609.72 of the Minn. Stat. Ann. respectively, resulting in an [redacted] 2019 conviction for disorderly conduct and sentence of time served (two days) and one year of supervised probation, including prohibition of alcohol, chemical and substance testing, a chemical dependency evaluation and/or treatment, anger management counseling, and individual therapy.

B. Positive and Mitigating Equities

The Director acknowledged the Applicant's positive and mitigating equities include her lengthy residence in the United States; family ties in the country, including her LPR spouse, three U.S. citizen children and two LPR children; home ownership; letters of support attesting to her good moral character; documentation indicating that the Applicant has taken responsibility for her actions and completed six months of therapy and; letters of support from the Applicant's psychologist, social worker, and probation officer.

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

The Applicant bears the burden of establishing that she merits a favorable exercise of discretion on humanitarian grounds, to ensure family unity, or as otherwise in the public interest. 8 C.F.R. § 245.24(d)(11). On appeal, the Applicant contends the Director erred by not fully considering all of the positive factors in her case and giving them sufficient weight, including her steady employment history and payment of taxes in the United States as well as the hardship her family would experience if she were not allowed to adjust status. She maintains that she and her spouse split the caretaking for their two minor children, and they would experience emotional and financial hardship in her absence, especially in light of the fact that their children were recently traumatized by their father's hospitalization for COVID-19 in April 2020. She further states that she suffers from diabetes and needs to remain under the care of her current physician to manage her condition. She also submits additional evidence including tax documentation and medical records relating to her spouse's two-week hospitalization for COVID-19.

The Applicant also argues that the Director failed to give sufficient weight to evidence of her rehabilitation, including a 2016 assessment indicating that she did not need to participate in chemical dependency health treatment, and a 2018 assessment indicating that she did not meet the criteria for alcohol or substance abuse disorders. She further argues that the Director downplayed her participation in therapy by stating that she completed six months of therapy when she actually completed seven and a half months of therapy from November 2018 to June 2019. She maintains that she no longer drinks alcohol and has learned positive parenting techniques that should weigh heavily in favor of a positive exercise of discretion.

We acknowledge and consider the Applicant's expressed remorse for her actions and that she is continuing her rehabilitative efforts. We also acknowledge the Applicant's remaining favorable and mitigating equities as reflected in the record, including the hardship that she and her family would experience if her application remains denied. However, the Applicant's arguments and evidence submitted on appeal are not sufficient to overcome the discretionary denial of her U adjustment application because of seriousness and recency of her criminal history.

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, a review of the evidence indicates that the Applicant has several arrests and convictions that occurred while she maintained U nonimmigrant status, including two disorderly conduct convictions and one DWI conviction. Driving under the influence of alcohol is a serious crime which poses a risk to public safety that is not inherent in other types of offenses and is a serious adverse factor in discretionary determinations. See Matter of Siniauskas, 27 I&N Dec. 207, 208 (BIA 2018) (citations omitted) (holding that in a determination of whether an alien is a danger to the community in bond proceedings, driving under the influence is a significant adverse consideration); Matter of Castillo-Perez, 27 I&N Dec. 664, 671 (A.G. 2019) (discussing the "reckless and dangerous nature of the crime of DUI").

We acknowledge that evidence in the record affirms that the Applicant was ultimately not convicted on the domestic assault charges, and although we do not give substantial weight to arrests absent convictions or other corroborating evidence of the allegations, we may properly consider them in our exercise of discretion. See Matter of Teixeira, 21 I&N Dec. 316, 321 (BIA 1996) (citing Matter of Grijalva, 19 I&N Dec. 713 (BIA 1988) and Matter of Thomas, 21 I&N Dec. 20 (BIA 1995) (finding that we may look to police records and arrests in making a determination as to whether discretion should be exercised)); Matter of Arreguin, 21 I&N Dec. 38, 42 (BIA 1995) (declining to give substantial weight to an arrest absent a conviction or other corroborating evidence, but not prohibiting consideration of arrest reports). Further, the fact that the Applicant was not convicted of the underlying charges, or that the charges were ultimately not sustained by a criminal court, does not equate with a finding that the underlying conduct or behavior leading to those charges did not occur. See 8 C.F.R. § 245.24(d)(11) (providing that USCIS "may take into account all factors . . . in making its discretionary determination on the application").

Here, the record indicates that the Applicant's two domestic assault arrests involved minor victims. The arrest report for the 2014 incident indicates that the Applicant "hit and pushed and kicked [her 15-year-old stepson] out of the house," and the Applicant's spouse handed his son a telephone and "told him to go outside and call the police." The report also indicates that the Applicant's 11-year-old daughter and infant son were at the home at the time of the assault. The record further reflects that in [redacted] 2015, the Applicant violated the domestic abuse no-contact order that was issued as a result of the domestic assault. The police report for the [redacted] 2018 domestic assault arrest indicates that the Applicant slapped and pulled her 15-year-old daughter's hair which resulted in "a red mark that was still present approximately 30 minutes after the assault."[1] Of further significance, is the fact that the victims involved in the assaults were the Applicant's stepson and daughter, and her conduct and related conviction concerns the very type of behavior that U nonimmigrant status seeks to protect against. See section 101(a)(15)(U)(iii) and 8 C.F.R. § 214.14(a)(9) (including, as qualifying criminal activity, "domestic violence"); see also Interim Rule, New Classification for Victims of Criminal Activity: *Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53014, 53015 (Sept. 17, 2007) ("In passing this legislation, Congress intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence . . . while offering protection to victims of such crimes."). Based on the foregoing, the Applicant's criminal history, occurring while she maintained U nonimmigrant status, is a serious adverse factor weighing against a favorable exercise of discretion.

With respect to rehabilitation, an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation. See Matter of Edwards, 20 I&N Dec. 191, 198 (BIA 1996) (finding, in the context of discretionary eligibility for relief under former section 212(c) of the Act, 8 U.S.C. § 1182(c), rehabilitation to be a "significant factor" to be considered in the exercise of discretion "in view of the nature and extent of the [individual]'s criminal history"); Marin, 16 I&N Dec. at 588 (providing, likewise in the context of discretionary relief under former section 212(c) of the Act, that "applicants . . . who have criminal records will ordinarily be required to make a showing of rehabilitation" and that "the fact of confinement [or] the recency of the offense" are relevant to whether rehabilitation has been established"). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which she was required to comply with court-ordered mandates, but also after her successful completion of them. See U.S. v. Knights, 534 U.S. 112, 121 (2001) (recognizing that the state has a justified concern that an individual under probationary supervision is "more likely to engage in criminal conduct than an ordinary member of the community"); Doe v. Harris, 772 F.3d 563, 571 (9th Cir. 2014) (noting that, although a less restrictive sanction than incarceration, probation allows the government to "impose reasonable conditions that deprive the offender of some freedoms enjoyed by law abiding citizens") (internal quotations omitted). Here, up until [redacted] 2020, only one year prior to the filing of this appeal, the Applicant was subject to probationary requirements, including the

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[1] The record also contains a social services report indicating that the Applicant's three minor children were removed from the Applicant's home and temporarily placed into foster care one week after the Applicant's arrest.

prohibition of alcohol, chemical and substance testing, anger management counseling, and individual therapy. As the Applicant only recently completed her probationary period and all court-ordered requirements, the record remains unclear as to whether she has been fully rehabilitated.

In the end, we acknowledge and consider the Applicant's positive and mitigating equities as reflected in the record. However, the Applicant's criminal history, as discussed above, remains a significant adverse factor that continues to outweigh the positive and mitigating equities the case presents. Accordingly, the Applicant has not established by a preponderance of the evidence that her adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, she has not demonstrated that she is eligible to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.