U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19062675

Date: MAR. 7, 2022

Appeal of Nebraska Service Center Decision

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

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 Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application). The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence. Upon *de novo* review, the appeal will be dismissed.

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 is a 25-year-old citizen of Mexico. In October 2014, the Director granted the Applicant derivative U nonimmigrant approval based on his family member's victimization and assistance to law enforcement. The Applicant entered the United States with valid derivative U nonimmigrant visa in September 2015; he was granted authorized stay until September 30, 2018. In August 2018, the Applicant requested an extension of stay; it was granted by USCIS in March 2019, valid through March 17, 2020. The Applicant filed his U adjustment application in January 2020. In November 2020, the Director denied the Applicant's U adjustment application. The Director acknowledged the positive and mitigating equities present in the Applicant's case: the letters of support on the Applicant's behalf, the Applicant's participation in counseling, and his assertions that he was no longer associating with the group of people who had a negative impact on his life.[1]

However, the Director determined that the positive and mitigating equities were outweighed by the adverse factor of the Applicant's criminal history. As detailed by the Director, a criminal history check revealed a [redacted] 2017, arrest for possession of drug paraphernalia; the Applicant pled guilty to a simple misdemeanor in [redacted] 2017, and was ordered to pay fines and fees and serve one year of supervised probation.[2] In addition, in [redacted] 2017, the Applicant was arrested for possession of a controlled substance (marijuana); the Applicant pled guilty to a serious misdemeanor in [redacted] 2018, was ordered to pay fines and fees, and was credited with 48 hours of time served in the custody of the county sheriff. More specifically, the Director determined that the Applicant's multiple arrests "for offenses related to controlled-substance violations while in the United States under U-3 nonimmigrant status demonstrate a disregard for U.S. law." The Director concluded that the record did not suffice to establish that the Applicant's continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that he warranted a positive exercise of discretion to adjust his status to that of an LPR.

The Applicant filed a motion to reopen and reconsider asserting eligibility for the benefit sought. The Applicant asserted that his father and his father's family would experience hardship if he is forced to return to Mexico. Counsel for the Applicant also maintained that his crimes were not serious violent crimes and the punishment "for these misdemeanors were quite small fees." Further, counsel contended that the charges were not related to controlled substances because Iowa's definitions of "controlled substances" are categorically broader than the federal definition. Counsel also maintained that the Applicant admitted his mistakes and asked for forgiveness, and did not try to make excuses, other than saying he fell into a bad crowd. Moreover, counsel noted that the Applicant has not gotten into any other trouble since 2017. In support, the Applicant submitted a statement, letters from his father and his father's fiancée describing the role the Applicant plays in the family and the hardships the family would face were the Applicant to reside abroad, mental health documentation pertaining to the Applicant's father, and financial documentation.

The Director reaffirmed the decision to deny the Applicant's U adjustment application and denied the motions accordingly, finding that the decision to deny the Applicant's U adjustment application was

[1] We also acknowledge the Applicant's family ties in the United States, gainful employment since March 2019, church membership, and the payment of taxes.

[2] In [redacted] 2017, the probation requirement was stricken from the sentencing order *nunc pro tunc*, but "[a]ll other terms not inconsistent with this order remain in force."

not in error because there was "nothing in evidence to demonstrate that an exercise of discretion in the Applicant's favor is warranted." Of specific concern to the Director was the Applicant's "violation of U.S. laws relating to narcotics and controlled substances twice during the validity period of his U nonimmigrant status."

On appeal, counsel submits a brief and previously submitted documentation and reiterates many of the assertions previously made in the Applicant's motion to reopen and reconsider. In summary, counsel for the Applicant maintains that his crimes are not crimes involving moral turpitude, nor are they violent crimes and the punishment "for these misdemeanors were quite small fees." Further, counsel contends that the charges were not related to controlled substances because Iowa's definitions of "controlled substances" are categorically broader than the federal definition. Counsel also maintains that the Applicant admitted his mistakes, asked for forgiveness, and has not gotten into any legal trouble since 2017. Finally, counsel details the hardships the Applicant's father and his family assert they would experience if the Applicant were to relocate abroad.

We adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case.

The arguments advanced on appeal are not sufficient to overcome the discretionary denial of the Applicant's U adjustment application. 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). Here, the record indicates that the Applicant was charged on two separate occasions in 2017, while in derivative U nonimmigrant status, of offenses related to drugs- possession of drug paraphernalia and possession of marijuana. Moreover, although the Applicant generally expressed remorse in his personal statement for making "dumb choices" and "hanging around people who were a bad influence," he did not directly address the specific circumstances that led to his two convictions.

Further, an applicant for discretionary relief "who has a criminal record will ordinarily be required to present evidence of rehabilitation before relief is granted as a matter of discretion." *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991); *see also Matter of Marin*, 16 I&N Dec. at 588 (emphasizing that the recency of a criminal conviction is relevant to the question of whether rehabilitation has been established and that "those who have recently committed criminal acts will have a more difficult task in showing that discretionary relief should be exercised on their behalf"). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which he was required to comply with court-ordered mandates, but also after his 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"). In this case, we note the Applicant was arrested for possession of marijuana in [redacted] 2017, days after having been convicted of possession of drug paraphernalia. Further, the record does not establish that the terms and conditions of the court orders imposed on the Applicant for his convictions have been satisfactorily met.

To summarize, the Applicant's family ties; employment and community ties; hardships to himself and his family; letters in support; the payment of taxes; and expressions of remorse for "dumb choices," while favorable, are not sufficient to establish that his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the nature, recency, and severity of the actions that lead to his two convictions in 2017 and the failure to establish that the criminal proceedings pertaining to his convictions have been completed. Consequently, the Applicant has not demonstrated that he merits a favorable exercise of discretion to adjust his status.

ORDER: The appeal is dismissed.