



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

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

In Re: 09373527

Date: JULY 21, 2020

Appeal of Vermont Service Center Decision

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

The Applicant seeks to become a lawful permanent resident based on her “U” nonimmigrant status as a victim of qualifying criminal activity under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application), and the matter is before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may in its discretion adjust the status of a U nonimmigrant to a lawful permanent resident (LPR) if that individual demonstrates, among other requirements, that he or she has been physically present in the United States for a continuous period of at least three years since admission as a U nonimmigrant and continuing through the date of the conclusion of adjudication of the U adjustment application. Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(a)(1). To demonstrate continuous physical presence, a U adjustment applicant must provide, in pertinent part, a photocopy of all pages of all passports that were valid during the three-year period in U status prior to the filing of the U adjustment application, or an equivalent travel document or explanation of why he or she does not have a passport. 8 C.F.R. § 245.24(d)(5). A U adjustment applicant must also provide an affidavit attesting to his or her continuous physical presence and documentary evidence in support of this requirement. *Id.* § 245.24(d)(9).

In addition, a U adjustment applicant must establish that his or her 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. When exercising its discretion, USCIS may consider all relevant factors, both favorable and adverse, but the applicant ultimately bears the burden of establishing eligibility and demonstrating that discretion should be exercised in his or her favor. 8 C.F.R. § 245.24(d)(10)-(11). Favorable factors such as family unity, length of residence in the United States, employment, community involvement, and good moral character are generally sufficient to merit a favorable exercise of discretion. *See 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 should submit evidence of mitigating equities. 8 C.F.R. § 245.24(d)(11).

An applicant must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was granted U-1 status from October 2014 until September 2018, and timely filed the instant U adjustment application in January 2018. The Director denied the application, determining that the Applicant had not provided a copy of all pages of all passports valid during the required period of continuous physical presence or a valid explanation of why she did not have a passport, and had not submitted an affidavit of her continuous physical presence, as required. The Director further concluded that the Applicant had not established that she warranted a favorable exercise of discretion, because the record reflected that she had a prior arrest history and she had not submitted evidence supporting a favorable exercise of discretion, as requested.

On appeal, regarding her continuous physical presence, the Applicant provides a copy of all pages of her Mexican passport that is valid from September 19, 2011, until September 19, 2017. The Applicant claims that the passport was previously unavailable and that the “officer could have easily verified that the Applicant did not travel.” The Applicant’s claim regarding USCIS’ ability to verify her travel is unpersuasive, as it is the Applicant’s burden to establish her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Moreover, although we acknowledge the copy of the Applicant’s passport, she has not provided the requisite affidavit attesting to her continuous physical presence, as per 8 C.F.R. § 245.24(d)(9). As such, the Applicant has provided insufficient evidence of her continuous physical presence.

The Applicant also claims that the Director erred because she provided ample evidence to establish her good moral character. However, to be eligible for adjustment of status under section 245(m) of the Act, a showing of good moral character is not required. Here, the record reflects that the Director did not make a determination regarding the Applicant’s good moral character. The Director did, however, issue a request for evidence (RFE) seeking evidence supporting a favorable exercise of discretion given the Applicant’s 1992 and 1999 arrests for theft of personal property and petty theft. See 8 C.F.R. § 245.24(d)(11) (explaining that the applicant has the burden of showing that discretion should be exercised in his or her favor and that where adverse factors are present, an applicant may offset these by submitting evidence of mitigating equities for USCIS to consider in determining whether a favorable exercise of discretion is appropriate). Although the Director correctly noted in her decision that the Applicant had not provided supporting evidence of her mitigating equities and had not established that she warranted a favorable exercise of discretion, the Applicant has not submitted this evidence on appeal.

III. CONCLUSION

The Applicant has provided insufficient evidence of her continuous physical presence and has not established that she merits a favorable exercise of discretion to adjust her status to that of an LPR.

Consequently, the Applicant has not established her eligibility for adjustment of status under section 245(m) of the Act.

ORDER: The appeal is dismissed.