



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

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

In Re: 6504281

Date: JULY 21, 2020

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) based on his “U” nonimmigrant status as a qualifying family member of 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 now 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 an individual lawfully admitted to the United States as a U nonimmigrant to that of an LPR if, among other eligibility requirements, he or she establishes 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 establishing 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, entered the United States without inspection, admission, or parole in 1995. In October 2013, the Applicant was granted U-2 status based on his spouse's victimization and assistance to law enforcement. The Applicant timely filed the instant U adjustment application in October 2017. 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 because his criminal history demonstrated a disregard for U.S. law and the circumstances of his arrests remained unclear due to his inability to provide certain requested documentation. The Applicant has not overcome this determination on appeal.

A. Positive and Mitigating Equities

In the record before the Director, the Applicant provided evidence of his family ties in the United States, which include his three U.S. citizen children and LPR spouse, the U-1 principal. The Applicant is described in supporting letters from neighbors, friends, family, his child's teacher, and the school receptionist as helpful, caring, dedicated to his family, and invested in the education of his children. The record reflects that the Applicant has maintained steady employment in the United States and that his employers and co-workers consider him to be hardworking and dependable.

B. Adverse Factors

The Applicant's primary adverse factor is his criminal history, particularly the lack of arrest reports or similar documentation describing the circumstances of his arrests. In [REDACTED] 2000, the Applicant was arrested in [REDACTED] North Carolina for conspiracy to commit breaking and entering, a felony. In a written statement below, the Applicant stated that while out with people he "[thought] were his friends," they asked him to join a breaking and entering at a salvage car auction. The Applicant explained that he had second thoughts and did not approach the gate, but as he was walking away a neighbor saw and called the police, resulting in the arrest of the Applicant and his friends. The record reflects that the charge was later dismissed. In response to the Director's request for evidence (RFE) seeking, in pertinent part, the arrest report for this incident, the record shows that the Applicant requested records from the Superior Court of [REDACTED] North Carolina, and that the court responded that the records are no longer available.

In [REDACTED] 2003, the Applicant was arrested in [REDACTED] North Carolina and charged with possession of a weapon with a defaced serial number, a misdemeanor. In his written statements, the Applicant explained that while walking home from a party on a cold night because he and some friends did not fit inside his friend's car, a car full of gang members drove by and began harassing them. The Applicant stated that he recognized one of the "cholos" from middle school and that he tried to get everyone to remain calm. The Applicant explained that a neighbor called the police and that before their arrival, he took his friend's jacket from inside the car and put it on. After their arrival, as the police searched everyone, they found a magazine from a .22 pistol inside the pocket of the jacket the Applicant was wearing and also found the corresponding pistol inside the car. The record reflects that the Applicant pleaded guilty to possession of a weapon with a defaced serial number, for which he was placed on unsupervised probation for 12 months. In response to the Director's request for

evidence (RFE) seeking, in pertinent part, the arrest report for this incident, the Applicant requested records from the Superior Court of [REDACTED] North Carolina, but the court responded that the records are no longer available.

Regarding his criminal history, the Applicant explained that he was “young, and dumb” and spent time with the “wrong people” [*sic*] which led him to make “bad decisions” that were “still causing [him] trouble.” He stated that after the 2003 arrest he “cut ties” with those friends and has “never been in trouble again.”

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 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). Upon *de novo* review of the record, as supplemented on appeal, the Applicant has not made such a showing.

In her decision, the Director acknowledged the Applicant’s positive equities, namely his three U.S. citizen children, close relationship with his family, history of steady employment, and favorable supporting letters from friends, acquaintances, and co-workers. Nonetheless, the Director determined that the Applicant had not met his burden to demonstrate that he warranted a favorable exercise of discretion, because although he had attempted to procure records regarding his criminal history and provided his own explanation, his conviction for possession of a firearm with a defaced serial number, in particular, weighed heavily against him, as USCIS had no way to corroborate his statement, the circumstances underlying his arrest remained unclear, and the record indicated that he was in violation of federal law. *See, e.g.*, 18 U.S.C. § 922(g)(5)(A) (prohibiting an alien who is “illegally or unlawfully in the United States” from “possess[ing] in or affecting commerce, any firearm or ammunition. . .”).

On appeal, the Applicant argues that the Director’s discretionary determination reflected an “unsettling level of arbitrariness” because he disclosed his criminal history with his U nonimmigrant petition and USCIS concluded, in granting his Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application), that he merited a favorable exercise of discretion. We acknowledge that USCIS previously waived the Applicant’s criminal violations in granting him U nonimmigrant status and afford some positive weight to this decision. Nonetheless, a U adjustment application is a separate adjudication and USCIS is not bound by its prior determination on a waiver application.

The Applicant next claims that although his conviction for possession of weapon with defaced serial number is serious and was in violation of federal law, the severity is mitigated by his young age of 20 years old at the time of the crime, the passage of more than sixteen years with a clean criminal record apart from minor traffic violations, the fact that the crime of which he was convicted was only a class one misdemeanor, not a violent offense, and unrelated to any other criminal conspiracy or criminal activity, and his demonstrated rehabilitation. The Applicant correctly recognizes that the crime of which he was convicted is serious, as the record indicates that he was in possession of ammunition, with access to a firearm, while present at a gang-related dispute. *See Matter of Marin*, 16 I&N Dec. 581, 584-85 (BIA 1978) (explaining that 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). Moreover, as the Director accurately noted, due to the lack of arrest reports or other similar documentation, the circumstances surrounding his arrests remain unclear, as the Applicant’s written statements provide the only account of the arrests and he largely denies responsibility for any misconduct on his part, attributing his involvement instead to the “bad influence[s]” in his life. As such, while the Applicant’s most recent arrest in 2003 is not recent, due to the lack of corroborating evidence, we are unable to determine the extent to which he has been forthcoming with USCIS and accepted responsibility for his actions, which calls into question the extent to which he has rehabilitated. *See id.* at 588 (noting that an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation); *Matter of Mendez-Morales*, 21 I&N Dec. 296, 304-5 (BIA 1996) (stating that rehabilitation includes the extent to which an applicant has accepted responsibility and expressed remorse for his or her actions).

The Applicant further asserts that he merits a favorable exercise of discretion because his positive factors outweigh his adverse factors. The record shows that the Applicant has presented evidence of family unity and humanitarian equities, which include his family ties in the United States, history of steady employment, and positive supporting letters from friends, acquaintances, and co-workers. Notwithstanding these factors, however, due to the Applicant’s multiple arrests and conviction for possession of a firearm with a defaced serial number, which appears to have violated federal law, and the lack of information regarding the underlying circumstances of his arrests, which prevents us from understanding the risk he poses to public safety and extent to which he has rehabilitated, the Applicant has not established that it is in the public interest to adjust his status to that of an LPR.

III. CONCLUSION

The Applicant has not established that his adjustment of status is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Consequently, he has not demonstrated that he is eligible to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.