



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

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

In Re: 6432069

Date: MAY 29, 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 (LPR) based on “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 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 of mitigating equities. 8 C.F.R. § 245.24(d)(11).

An applicant must establish 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 El Salvador, entered the United States without inspection, admission, or parole in March 2005. In October 2013, USCIS granted the Applicant U-1 status as a victim of felonious assault who was helpful in the investigation of the crime. The Applicant timely filed the instant U adjustment application in June 2017. The Director denied the application, determining that the Applicant had not demonstrated that his adjustment of status to LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest because his criminal history, in particular a [REDACTED] 2016 arrest for indecent exposure and annoyance or molestation of a child, outweighed the positive factors in his case. The Applicant has not overcome this determination on appeal.

### A. Favorable and Mitigating Equities

The Applicant is 35 years old and has lived in the United States for approximately 15 years. The Applicant's family ties in the United States include his spouse, stepchild, and two children, one of whom is a U.S. citizen. The record, as supplemented on appeal, reflects that the Applicant's 14-year old daughter traveled to the United States as a derivative U nonimmigrant, that she is well-adjusted to her life in the United States, and that she enjoys a close relationship with the Applicant. The Applicant provided evidence of stable employment and claimed to be the sole provider for his family. In statements from an employer and co-worker, the Applicant is described as hardworking and professional. The Applicant explained that if he had to return to El Salvador, it would difficult to find work, he would face dangerous conditions due to gang violence, and his family would suffer hardship.

On appeal, the Applicant additionally submits a written statement claiming that he has paid taxes from 2006 until 2018, along with a copy of his Form 1040, U.S. Individual Income Tax Return from 2018. The Applicant further provides a letter from the [REDACTED] Children's Center confirming his volunteer service at their food pantry from March 2019 until April 2019, as well as additional supporting letters from co-workers and friends describing his strong work ethic and commitment to his family.

### B. Adverse Factors

The Applicant's primary adverse factor is his criminal history. The record reflects that in [REDACTED] 2008, the Applicant was cited for driving without a license. The Applicant stated that he paid the applicable fines.

In [REDACTED] 2016, the Applicant was arrested in [REDACTED] California for indecent exposure and annoying or molesting a child under the age of 18, in violation of sections 314(1) and 647.6(a)(1) of the California Penal Code (Cal. Penal Code), respectively. According to the *Statement of Probable Cause for Arrests Made Without a Warrant* (incident report), a peace officer from the [REDACTED] Police Department responded to a complaint "regarding a subject masturbating inside a vehicle" that was parked in front of a high school. The incident report states that the Applicant appeared to be focused on a female who was about 100 feet away and approaching the vehicle, and that once the Applicant noticed the officer, he "quickly pulled up his pants." The officer later determined that the female was a 17-year old student at the high school. In his personal statement below, the Applicant explained that he was "was in [his] car near a school and did not have any clothes on."

According to a criminal complaint filed in the Superior Court of California, [REDACTED] the Applicant was charged in [REDACTED] 2016 with “willfully and unlawfully engag[ing] in lewd and dissolute conduct in a public place and in a place open to the public and exposed to public view,” in violation of section 647(a) of the Cal. Penal Code. The record reflects that in [REDACTED] 2017, the Applicant entered a plea of not guilty and was placed in a 12-month pre-trial diversion program, in which he was ordered to stay away from K-12 schools and playgrounds by at least 100 yards in [REDACTED], pay certain fines, and perform 60 hours of volunteer work. The following day, the Applicant was booked and released from [REDACTED] Jail under section 647(f) of the Cal. Penal Code.<sup>1</sup> The record shows that the Applicant completed the diversion program, resulting in the dismissal of his case in [REDACTED] 2018.

In his written statements below, the Applicant stated that he never intended to harm anyone, that he was ashamed to have this incident on his record, and that he had learned from the experience. On appeal, the Applicant reiterates that he is sorry for his past mistake.

### C. A Favorable Exercise of Discretion is Not Warranted Based on Humanitarian Grounds, to Ensure Family Unity, or 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.

We have considered the favorable factors in this case. We acknowledge the Applicant’s lengthy residence in the United States, family ties, history of employment, some evidence of payment of taxes, and expression of remorse. However, notwithstanding these factors, the Applicant has not demonstrated that he merits a favorable exercise of discretion to adjust his status to that of an LPR.

In her decision below, the Director determined that the Applicant’s criminal history demonstrated a “blatant disregard for the laws of this country,” as sexually based offenses involving children must be considered significant factors when assessing the risk of harm to the public. On appeal, the Applicant contends that the Director erred in affording significant weight to his 2016 arrest, as the statement that his criminal history demonstrated “blatant disregard for the laws of this country” is inaccurate, he has only one arrest and no convictions, his actions were not malicious or intentionally harmful, he complied with his diversion, and he is genuinely remorseful.

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). Although we acknowledge that the Applicant was not convicted on the charge of engaging in lewd and dissolute conduct, the record indicates that the relevant incident occurred recently, while he was in U status. As the misconduct is sexual in nature and occurred in

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<sup>1</sup> In the record below, the Applicant explained that the booking charge was in error, as section 647(f) of the Cal. Penal Code is disorderly conduct- public drunkenness. The record reflects that the Applicant provided updated documentation of his criminal history to demonstrate the error and that the Director accepted this explanation.

close proximity to minors, we consider it to be especially serious.<sup>2</sup> Moreover, the record shows that during the pendency of the instant U adjustment application, the Applicant remained under a court order to stay away from K-12 schools and playgrounds by at least 100 yards in  reflecting the court's concern for the safety of minors in his presence.

The Applicant further argues that the Director erred in giving “untethered weight” to the incident report compared to his own explanation. However, the Applicant’s explanation provides little probative detail about the incident, only that he was “in [his] car near a school and did not have any clothes on.” Regardless, it is “especially appropriate” for us to consider the factual information contained in police reports, as all relevant factors concerning an arrest and conviction should be taken into account in exercising our discretion. *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988). As such, we find no error in the Director’s decision to afford significant adverse weight to the Applicant’s 2016 arrest.

To summarize, due to the Applicant’s 2016 arrest while in U status for indecent exposure and annoying or molesting a child under the age of 18, which led to the criminal charge of engaging in lewd and dissolute conduct, for which he remained under a court order to stay away from schools and playgrounds for 12 months during the pendency of the instant U adjustment application, and which indicates that he poses a risk to public safety, the Applicant has not established that it is in the public interest to adjust his status to that of an LPR. The Applicant’s family ties, lengthy residence in the United States, employment history, and payment of taxes, 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 severity and recency of the conduct that led to his arrest. Consequently, the Applicant 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.

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<sup>2</sup> Applicable regulations state that we will generally not exercise our discretion in a U adjustment applicant’s favor where the applicant has committed or been convicted of a crime involving sexual abuse committed upon a child. 8 C.F.R. § 245.24(d)(11). Although the record does not reflect that the Applicant committed or was convicted of such an offense, the regulatory language is indicative of USCIS’ extremely serious regard for offenses that are sexual in nature and involve children.