U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6437068

Date: JULY 22, 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 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 individuals lawfully admitted to the United States as U nonimmigrants to that of an LPR if, among other eligibility requirements, they establish that 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.

When exercising its discretion, USCIS may consider all relevant factors, both favorable and adverse, but the applicants ultimately bear the burden of establishing eligibility and demonstrating that discretion should be exercised in their 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).

A petitioner 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 India, entered the United States without inspection, admission, or parole in October 1996. In October 2014, USCIS granted the Applicant U-1 status as a victim of armed robbery who was helpful in the investigation of the crime. The Applicant timely filed the instant U adjustment application in November 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 lengthy criminal history, including a 2018 arrest for driving under the influence (DUI) while in U status, failure to disclose information about pending criminal charges, and withholding of requested arrest reports outweighed the positive factors in his case. The Applicant has not overcome this determination on appeal.

A. Positive and Mitigating Equities

The Applicant was granted U-1 status based on an [redacted] 2007 incident in which the perpetrator of the armed robbery pointed a gun at the Applicant while he was working in a store. In the record before the Director, the Applicant provided evidence of payment of taxes, including tax return transcripts from the Internal Revenue Service (IRS) for 2014-2016, and a history of employment. The record also reflects that the Applicant served as guardian to his stepdaughter when his former spouse, T-A-,[1] was unable to care for her. On appeal, the Applicant provides supporting letters from friends and community members, including a detective sergeant with the [redacted] Georgia Police Department, stating that he does not pose a danger to the community, is a good person, and is humble.

In addition, the record contains evidence that the Applicant is a victim of domestic violence by T-A-. The Applicant provided incident reports documenting at least five incidents between October 2015 and November 2016 evincing his mistreatment by T-A- and members of her family, including hitting the Applicant, choking him, stealing his money and personal property, making harassing phone calls, threatening to kill him if he did not drop charges against T-A-, and threatening to kidnap his stepdaughter, despite T-A-'s decision to appoint him as guardian in April 2016. On appeal, the Applicant submits a May 2019 psychological evaluation by a Licensed Clinical Social Worker (LCSW) concluding that the Applicant is a long-time victim of domestic violence and diagnosing him with adjustment disorder with mixed anxiety and depressed mood, insomnia disorder, and post-traumatic stress disorder (PTSD). His supporting letters further corroborate his experience of domestic violence by T-A-.

In her decision, the Director afforded minimal positive discretionary weight to the Applicant's claim of victimization by T-A- because, as discussed in section II.B.2, *infra*, although the Applicant provided incident reports documenting instances in which he claimed to be the victim, he did not submit arrest reports requested by the Director regarding allegations of his own alleged misconduct, including a 2014 arrest on domestic violence-related charges. On appeal, the Applicant claims that the Director erred in not fully considering the extent of his victimization as a humanitarian factor. He also explains that he submitted the incident reports of his own victimization as evidence of what he told the police about T-A- and her family's mistreatment of him and not as evidence that "what is reported is true."

[1] We use initials to protect the privacy of individuals.

Upon *de novo* review, however, we find no error in the Director's determination. As discussed below, the record contains ample evidence that the Applicant perpetrated acts of domestic violence against T-A-, the Applicant's failure to provide the requested evidence prevents us from fully understanding the circumstances of his arrest, and he has not provided the requested evidence on appeal.

B. Adverse Factors

1. General Criminal History Prior to Obtaining U-1 Status

In [redacted] 2009, the Applicant was arrested and charged with keeping a gambling place, in violation of section 16-12-23 of the Georgia Code Annotated (Ga. Code Ann.). In a December 2012 written statement submitted with his Form I-918, Petition for U Nonimmigrant Status (U petition), the Applicant explained that he did not have a job and that somebody "told [him] to work at a gambling store." The Applicant stated that he accepted the job because he needed to take care of his family, but that the police later busted the store, resulting in his arrest. The record shows that the Applicant pleaded guilty to the offense and was sentenced to 12 months of probation and payment of a fine.

In [redacted] 2009, the Applicant was arrested and charged with marijuana possession of less than one ounce, in violation of section 16-13-2B of the Ga. Code Ann. In his December 2012 written statement, the Applicant explained that the charges were dropped because "it was a mistake." In a psychological evaluation submitted on appeal, the Applicant explained that the marijuana belonged to his brother-in-law and that after his brother-in-law turned himself in, the charges were dropped. The record shows that the charge was reduced to a warning and entered as a dismissal in [redacted] 2010.

In [redacted] 2011, the Applicant was arrested and charged with keeping a gambling place, in violation of section 16-12-23 of the Ga. Code Ann. The record reflects that in [redacted] 2011, the charge was dead docketed when the Applicant was placed on an immigration hold. In his December 2012 written statement, the Applicant stated that he "tried to open his own store." In his psychological evaluation submitted on appeal, the Applicant explained that while he was covering for a friend at a convenience store, the store was raided and he was arrested along with others.

In [redacted] 2013, the Applicant was arrested for theft by deception, a felony, in violation of 16-8-3 of the Ga. Code Ann. The Bill of Accusation from the [redacted] Georgia Superior Court states that the Applicant unlawfully obtained U.S. currency valued in excess of $1,500 by deceitful means, with the intent to deprive the owners of their property. In his psychological evaluation on appeal, the Applicant explains that after he went to visit an old friend, he was arrested by law enforcement for being on the property because his friend was under investigation for money laundering. The record reflects that the charge was dismissed in [redacted] 2016 for lack of evidence.

2. Evidence of Domestic Violence

The record shows that in [redacted] 2010, the Superior Court for [redacted] Georgia entered a *Family Violence Ex Parte Protective Order* against the Applicant. The *Petition for Temporary Protective Order* states that that the Applicant committed acts including verbally abusing, raping, punching, biting, and slapping T-A-, and including an order to stay away from his stepdaughter's primary school. The record reflects that the order was dismissed in [redacted] 2011 on T-A-'s motion. In

an April 2014 written statement, T-A-, who suffers from diabetes, stated that she was in a diabetic coma in May 2010 and was disoriented, confused, and suffered memory loss afterwards. She explained that her mother took advantage of her compromised mental state, told her lies about the Applicant, and convinced her to seek the protective order. T-A- stated that "[everything she] said to the police in [redacted] 2010 . . . to get the [temporary protective order] were lies concocted by [her] mother." The record reflects that in March 2011, T-A- made statements regarding the Applicant's maltreatment of her to an officer from Immigration and Customs Enforcement (ICE), and that she later declared that those statements were untrue.

In [redacted] 2014, two months after T-A- provided the written statement to USCIS disavowing her claim that the Applicant had abused her, the Applicant was arrested for Battery-Family Violence, in violation of section 16-5-23.1(f)(1) of Ga. Code Ann. According to the criminal complaint from the [redacted], Georgia Superior Court, the Applicant intentionally caused "visible bodily harm, to wit: red marks and scratches to the chest, to the person of [T-A-] by striking her in the chest. . . ." In a written statement on appeal, the Applicant explains that after he and T-A- got into an argument, he left their home. He states that several days later, he requested that the police check in on her because of her health issues. The Applicant explains that during the wellness check, the police discovered bruises on T-A-'s body from a recent diabetic episode in which she had fallen in the bathroom, leading to his arrest on domestic violence-related charges. The record shows that in [redacted] 2015, the case was dismissed as *nolle prosequi* based on successful completion of deferred adjudication. The Applicant provided a November 2015 letter stating that he had completed the requisite anger management program.

3. 2018 Arrest for DUI

In [redacted] 2018, the Applicant was arrested in [redacted] Georgia for DUI in violation of 40-6-391(a) of the Ga. Code Ann. In his written statement on appeal, the Applicant states that while he and T-A- were in a restaurant meeting to sign divorce papers, she had a diabetic episode. The Applicant states that he agreed to drive T-A- to the emergency room even though he had consumed one and a half beers because she refused to take an ambulance. He explains that he knew it was wrong to drive after drinking but he was "terrified that [she] would be mad at [him] if [he] did not drive her." He explains that while in the car, T-A- turned up the music very loud, resulting in his arrest for violation of a noise ordinance and DUI.

The Applicant further provides on appeal the citation disposition showing that in [redacted] 2019, he pleaded *nolo contendere* to reckless driving and was sentenced to 12 months of probation, 40 hours of community service, a $1,000 fine, participation in a DUI risk reduction program, and four months with an interlock ignition device. In [redacted] 2019, the Applicant completed the required DUI program. The record also indicates that a related charge for excessive volume from radio in motor vehicle- first offense, in violation of section 40-6-14 of the Ga. Code Ann., was dismissed.

4. Failure to Disclose Certain Arrests and Provide Arrest Reports of Alleged Misconduct

The record reflects that although the Applicant's [redacted] 2013 and [redacted] 2014 arrests occurred during the pendency of his U petition, he did not disclose these arrests to the Director. In a November 2017 written statement, the Applicant explained that he believed that USCIS was aware of the arrests

because the [redacted] 2013 arrest resulted in an immigration hold, and he did not know that he was required to update his U petition. In denying his U adjustment application, the Director determined that the Applicant appeared to have "willfully withheld information relevant to the adjudication of [his U petition]," as USCIS was not aware of the arrests when deciding to grant him U-1 status.

The record further shows that in September 2018, the Director issued a request for evidence (RFE) seeking arrest reports, criminal complaints, criminal dispositions, and other pertinent documentation regarding the Applicant's criminal history. Although the Applicant provided some of the requested documentation in a November 2018 response, he did not provide arrest reports of his alleged misconduct.

In addition, the Applicant did not disclose the [redacted] 2018 DUI arrest to USCIS, either with his November 2018 RFE response or in subsequent correspondence. In his written statement on appeal, the Applicant states that he is sorry for "being absent minded" and that he forgot to tell his immigration lawyer the details of the arrest due to the fear and stress he was experiencing.

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.

First, we have considered the favorable factors in this case. We acknowledge the Applicant's lengthy residence in the United States, work history, payment of taxes, the victimization that resulted in his grant of U-1 status, and his claim of victimization by T-A-. 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 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). Here, the Applicant's 2018 arrest for DUI is both recent and particularly serious, as DUIs pose a risk to public safety that is not inherent in other types of offenses. *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). Although the charge was reduced to reckless driving, the record reflects that the Applicant's sentence included 12 months of probation, four months with an ignition interlock device, and participation in a DUI program. Moreover, notwithstanding the Applicant's explanation regarding T-A-'s medical condition and refusal to take an ambulance, and his contention that the divorce and need to sign papers forced him to interact with T-A-, these circumstances "[do] not negate the dangerousness of his conduct." *Id.* at 209.

The Applicant has also not established his rehabilitation for the DUI because his criminal proceedings remain on-going. To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which he or she was required to comply with

court-ordered mandates, but also evaluate the applicant's conduct after he or she has satisfied all court-ordered and monitoring requirements. With respect to applicants on probation, the U.S. Supreme Court has recognized that the state has a justified concern that a probationer is "more likely to engage in criminal conduct than an ordinary member of the community." *U.S. v. Knights*, 534 U.S. 112, 121 (2001). Further, when an individual is on probation, he or she enjoys reduced liberty, as the criminal proceedings remain pending during probation and the Applicant must report periodically to the probation officer and the court. *See Doe v. Harris*, 772 F.3d 563, 571 (9th Cir. 2014); *U.S. v. King*, 736 F.3d 805, 808-09 (9th Cir. 2013). Here, the Applicant's [redacted] 2018 arrest occurred while he was in U-1 status and during the pendency of his U adjustment application. He was placed on probation during the same month that he filed the instant appeal in May 2019 and has not submitted documentation to show that his criminal proceedings have been completed. The fact that the Applicant remains on probation prevents us from assessing his behavior after the completion of his sentence and precludes us from fully evaluating whether he has rehabilitated.

The record further shows that in addition to the DUI, the Applicant has been arrested five times, including 2013 and 2014 arrests for felony theft by deception and battery-family violence while his U petition was pending. The Applicant's 2014 arrest on domestic violence-related charges is of particular concern due to the severity and nature of the offense, as the Applicant seeks adjustment of status as a victim of crime and claims to be a victim of domestic violence himself. Here, prior to the dismissal of the charges, the record shows that the Applicant was granted deferred adjudication, which occurs "[u]pon a verdict or plea of guilty or a plea of nolo contendere. . . ," Ga. Code Ann. § 42-8-60(a), and was required to complete an anger management program. Moreover, the occurrence of this arrest just two months after T-A- provided a statement to USCIS retracting the accusations that resulted in the temporary protective order calls into question the veracity of her retraction, and this uncertainty is exacerbated by the Applicant's failure to provide the arrest report, as requested by the Director, which prevents us from fully understanding the circumstances that resulted in his arrest.

On appeal, the Applicant asserts that the Director erred in assigning negative weight to his decision not to submit arrest reports, as they are inherently unreliable, not part of the record of conviction, and have little, if any, probative value in showing that he engaged in misconduct. Although, as the Applicant correctly asserts, we should not give substantial weight to arrests absent convictions or other corroborating evidence of the allegations, we may nonetheless consider them in our exercise of discretion. *See Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing to *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). Here, as the Applicant has not provided the arrest reports, we are unable to fully assess his conduct in determining whether he merits a favorable exercise of discretion. Notably, despite the Director's emphasis on the Applicant's failure to provide the requested arrest reports below, he has still not provided them on appeal.

The record additionally reflects that the Applicant has not been entirely forthcoming with USCIS about his actions. In addition to withholding arrest reports, he did not timely disclose his 2013, 2014, and 2018 arrests to USCIS and does not appear to have expressed remorse or accepted responsibility for his role in any of his alleged misconduct, instead attributing the arrests to misconduct by T-A- and her

family, his friends, and his employer. On appeal, the Applicant attributes his failure to disclose his arrests to a misunderstanding and his victimized frame of mind, and notes that the arrests were not the subject of the RFEs. The Applicant, through counsel, maintains that "[i]n his victimized frame of mind, forgetful, suspicious. . . he was ill-equipped to judge what to do correctly. . . and made the wrong decision not to disclose the arrest." Although we acknowledge this explanation, the record reflects an overall lack of candor by the Applicant. The Applicant's failure to address his role underlying his criminal history indicates that he has not accepted responsibility for his criminal behavior. *See Matter of Marin*, 16 I&N Dec. at 588 (noting that an applicant for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation); *Matter of Mendez-Moralez*, 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 claims that the Director failed to properly consider the evidence in its totality when determining that his actions evinced an affirmative intention to "disregard the laws of the United States," especially given the effects of the abuse that he suffered by T-A-. He also asserts that the Director failed to consider the hardship he would experience upon denial of his U adjustment application due to his longtime victimization by T-A- and her family and the loss of relationship with a stepchild that he raised for eight years of her life. As previously stated, we find no error in the Director's decision to afford minimal weight to his victimization by T-A- due to his failure to provide arrest reports of his own alleged misconduct, including acts of domestic violence against T-A-. Regardless, even if the Applicant were to establish his victimization and hardship, these equities would be insufficient to overcome the Applicant's significant negative factors. The record shows that the Applicant has a lengthy and serious criminal history, including a recent DUI arrest while in U status for which he remains on probation, as well as domestic violence-related charges that suggest he poses a risk to public safety. The Applicant has also not adequately disclosed, documented, acknowledged, and expressed remorse for his actions. As such, although the Applicant presented some evidence of humanitarian considerations, he has not demonstrated that adjustment of status to that of an LPR is justified in the public interest. Consequently, the Applicant has not established his eligibility to adjust his status under section 245(m) of the Act.

ORDER: The appeal is dismissed.