U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4615621

Date: JUNE 8, 2020

Appeal of Vermont Service Center Decision

Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant

The Petitioner, who was granted lawful permanent residency based on her "U-1" nonimmigrant status, seeks immigrant classification of the Derivative, her spouse, as a qualifying family member. *See* Immigration and Nationality Act (the Act) section 245(m)(3), 8 U.S.C. § 1255(m)(3) (outlining eligibility for classification).

The Director of the Vermont Service Center denied the Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant (U immigrant petition), concluding that the record did not establish the Derivative's eligibility. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 8 C.F.R. § 214.14(f)(5); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Individuals who gain their lawful permanent residency through their U-1 status may seek lawful permanent residency on behalf of a qualifying family member who has never held derivative U nonimmigrant status if granting the immigrant status would avoid extreme hardship to either the U-1 principal or the qualifying family member. Section 245(m)(3) of the Act; 8 C.F.R. § 245.24(g). Even if hardship is established, ultimately, a petitioner bears the burden of proof to demonstrate that U.S. Citizenship and Immigration Services (USCIS) should exercise its discretion and adjust the status of a qualifying family member, including his or her spouse. Section 245(m)(3) of the Act; 8 C.F.R. § 245.24(a)(2), (h)(1)(v).

USCIS may consider all factors when making its discretionary decision, including acts that would otherwise render a qualifying family member inadmissible and mitigating circumstances when there are adverse factors. 8 C.F.R. § 245.24(h)(1)(v). Depending on the nature of the adverse factors, a petitioner may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship. *Id.*

II. ANALYSIS

USCIS accorded the Petitioner, a citizen of Mexico, U-1 nonimmigrant status from October 2013 through October 2017. Subsequently, USCIS adjusted the Petitioner's status to lawful permanent resident, and during the pendency of the adjustment application, the Petitioner filed a U immigrant petition on behalf of the Derivative, her spouse, who also is a citizen of Mexico. Upon review of the record, the Director denied the U immigration petition as a matter of discretion.

A. Adverse Factors

The Director considered as adverse the seriousness of the Derivative's criminal history in Illinois, which includes a 2002 arrest for domestic battery, and a 2010 arrest with initial charges for three controlled substance violations involving cocaine and an ultimate 2012 guilty plea and conviction for possession of a controlled substance other than methamphetamine or counterfeit substance, a Class 4 felony offense. The Director also considered as adverse that the Derivative's explanation in his personal statement submitted in response to the Director's request for evidence (RFE) contradicted statements contained in the underlying arrest report concerning the specific actions taken by the Derivative during the domestic battery offense. The Director noted that the Derivative indicated in his statement that, upon arguing with his former domestic partner, "he pushed her onto the couch after she ripped his shirt while she attempted to get him to not leave the premises." Whereas, statements in the police report identified his former domestic partner as the victim and indicated that the Derivative "struck her about the face and head with a closed fist." The Director further considered that the Derivative did not provide any specific information concerning the circumstances resulting in his 2010 arrest for drug-related offenses.[1] In addition, the Director found as adverse that the Petitioner did not establish the Derivative's rehabilitation.

On appeal, the Petitioner argues that the Derivative's arrest for domestic battery did not result in a conviction, and therefore, is irrelevant to the Derivative's eligibility and USCIS' determination whether he merits relief as a matter of discretion. Although we agree that the record does not demonstrate the Derivative's conviction for a domestic battery offense after his 2002 arrest, his arrest, and the specific circumstances underlying it, is a factor USCIS considers in its discretionary determination. 8 C.F.R. § 245.24(h)(1)(v) (stating "USCIS may take into account all factors . . . in making its discretionary decision on the [U immigrant petition]"); *see also Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (A.G. 2019) (concluding that when determining whether discretionary relief is warranted, "[a]n alien's criminal record—including its 'nature, recency, and seriousness'—is a key factor") (citation omitted); *Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) ("[T]he admission into the record of the information contained in the police reports is especially appropriate in cases involving discretionary relief . . . where all relevant factors . . . should be considered to determine whether a[] [petition] warrants a favorable exercise of discretion."); *Avila-Ramirez v. Holder*, 764 F.3d 717, 725 (7th Cir. 2014) (citing *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995) and *Sorcia v. Holder*, 643 F.3d 117, 126 (4th Cir. 2011) when discussing the proper weight to give arrest reports in considering discretionary factors).

[1] The Director also indicated the Petitioner did not submit the underlying police report, as requested. Our review of the record of proceedings demonstrates that it contains a partial copy of the 2010 arrest report.

As it concerns his 2002 arrest for domestic battery, the Derivative asserts, in an additional statement submitted on appeal, that he never hit his former domestic partner.[2] In her statement also submitted on appeal, the Derivative's former domestic partner indicates that she and the Derivative forgave one another and they never went to court as a result of his arrest. However, she does not provide any further discussion regarding the Derivative's underlying actions resulting in his arrest.[3] In addition, the Petitioner does not provide on appeal any further discussion or evidence of the underlying circumstances regarding the Derivative's 2010 arrest, as requested by the Director.

To address the Director's concern that she has not demonstrated the Derivative's rehabilitation, the Petitioner avers, in an additional statement submitted on appeal, that the Derivative has taken responsibility for his mistakes, he has completed his probationary period, and he "has stayed out of trouble since 2010" with "no other criminal convictions in the United States."[4] Contrary to these assertions, a routine search of Department of Homeland Security records indicates that the Derivative was arrested as recently as [redacted] 2019 and charged with two counts of domestic battery in violation of Illinois law and served with a protection order, which remains in effect until [redacted] 2021, both after the Petitioner's submission of the U immigrant petition and while she seeks favorable exercise of USCIS' discretion.[5]

B. Favorable and Mitigating Factors

The Director found that the Petitioner has established extreme hardship in the Derivative's absence. In the brief submitted on appeal, the Petitioner reiterates the hardship factors that would affect their family if the Derivative were unable to remain in the United States. She refers to the emotional support the Derivative provides to her, their five U.S. citizen children, and his disabled brother, and their reliance on his financial support as a business owner and sole breadwinner. She also references their filing of income taxes and provides a letter from a Senior Pastor with the [redacted] Ministries, in which the pastor expresses gratitude for the Derivative's volunteer activities and community service on behalf of the organization's food program.

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[2] In the denial of the U immigrant petition, the Director noted that the Petitioner's personal statement submitted with her RFE response included an indication of its translation to the English language by her child, but the Petitioner did not include the original version in her native language or a certification of its translation. *See* 8 C.F.R. § 103.2(b)(3) (requirements for documents in a foreign language). Similarly, the Derivative's personal statement submitted with the RFE response contained the same indication of its translation by his child and did not include a certification of its translation. The Petitioner does not address the Director's concerns regarding the requirements of 8 C.F.R. § 103.2(b)(3) on appeal. The Derivative's additional statement submitted on appeal is in the English language; it is unclear whether it is a translation from the Derivative's native language and must include a certification of its translation, as required. Accordingly, we give limited evidentiary weight to its contents.

[3] Although the record contains the Derivative's former domestic partner's original statement in the Spanish language, a certification of its translation into the English language is absent in the record, and thereby, we accord the statement limited evidentiary weight.

[4] Similar to the Derivative's statement submitted on appeal, the Petitioner's additional statement is in the English language and the record is unclear whether its original contents are in her native language. Accordingly, we give limited evidentiary weight to the Petitioner's additional statement.

[5] Evidence of rehabilitation is one of several relevant factors in the ultimate determination of whether an individual warrants a positive exercise of discretion. As discussed below, the Petitioner has not established that the U immigrant petition is approvable for reasons without consideration of this arrest and the issuance of the protection order. However, this does not preclude USCIS from considering the effect, if any, the arrest and protection order has on the Derivative's eligibility in future proceedings.

The record further demonstrates the termination of the Derivative's court-mandated probationary period upon his successful completion of the terms and conditions of such period as it relates to his 2012 conviction for a drug offense. In letters of support, the Petitioner's and the Derivative's children, friends, coworkers, and the Derivative's brother's legal counsel recognize the emotional and financial support that the Derivative has provided to his family members and attest to his moral character. In their letters, individuals from the Derivative's field (the racetrack industry) also discuss his work ethic and the contributions he has made in his profession.

C. Weighing of the Factors as an Exercise of Discretion

As indicated previously, the regulations specify that USCIS may consider all factors when making its discretionary decision. 8 C.F.R. § 245.24(h)(1)(v). Depending on the nature of the adverse factors, a petitioner "may be required to clearly demonstrate that the denial of adjustment of status would result in exceptional and extremely unusual hardship." *Id.* However, even upon such a showing, USCIS may not exercise its discretion, when for example, a qualifying family member falls within the class of individuals on behalf of which even a showing of exceptional and extremely unusual hardship may be insufficient to establish that the positive and mitigating factors outweigh the adverse factors. *See id.* (providing USCIS "will generally not exercise its discretion favorably in cases where the [individual] has committed or been convicted of a serious violent crime, . . . or multiple drug-related crimes"); *see also United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

Here, the Director found the Derivative's conviction for domestic battery to be a serious violent crime, and accordingly, determined that USCIS would not exercise its discretion favorably. As discussed previously, the Petitioner asserts that the Derivative was not convicted of a domestic battery offense and this incident resulting in his arrest is irrelevant in determining his eligibility. Although the record demonstrates that the Derivative was not convicted of such offense as asserted, the regulations do not require a conviction—only the commission of a serious violent crime—for USCIS not to exercise its discretion favorably. In the underlying arrest report, the reporting officer with the [redacted] Police Department indicated that according to the Derivative's former domestic partner, the Derivative "became enraged and struck [her] about the face and head with a closed fist." In the sections of the report detailing the "nature of the injury" and the "type of instrument, weapon, or force used," the reporting officer wrote "punched to back of head/face" and "closed fists." The reporting officer also indicated that upon investigating the incident, the Derivative was "placed [] in custody for domestic battery" and charged with violating section 12-3.2(a)(1) of the Criminal Code contained within the Illinois Compiled Statutes.[6]

The Petitioner does not provide any further discussion on appeal of the Director's determination that domestic battery is a serious violent crime. However, we do not need to reach the question whether the evidence indicates the Derivative committed domestic battery or whether domestic battery in

[6] At the time of the offense, this particular provision provided, "[a] person commits domestic battery if he intentionally or knowingly . . . [c]auses bodily harm to any family or household member . . . ." 720 Ill. Comp. Stat. Ann. 5/12-3.2(a)(1) (West 2002).

Illinois is a serious violent crime because USCIS generally will not exercise its discretion favorably when the record also demonstrates the qualifying family member's commission of multiple drug-related crimes.

Here, the police report underlying the Derivative's arrest and charges for cocaine-related offenses and ultimate conviction for possession of a controlled substance, a Class 4 felony, demonstrates that in [redacted] 2010, the Derivative "was placed under arrest after selling cocaine *on two separate occasions* to undercover officers . . . and was found in possession of cocaine on [redacted] 2010 after [an] executed search warr[a]nt [] at his residence." (emphasis added). Moreover, as discussed, the Petitioner does not provide on appeal any further discussion or evidence of the underlying circumstances or the Derivative's actions resulting in his 2010 arrest. Based on the foregoing, the record reflects that the Derivative may have been involved with the commission of cocaine-related offenses on three occasions, which the Petitioner does not address on appeal. The Derivative's involvement in, and ultimate conviction with drug-related crimes and his arrest for a domestic battery offense involving his former domestic partner are serious in nature and offenses to the public and to the person. Accordingly, the Petitioner has not demonstrated that USCIS should exercise its discretion favorably.

III. CONCLUSION

The Petitioner has not met her burden to establish by a preponderance of the evidence that USCIS should exercise its discretion favorably, and accordingly, the U immigrant petition remains denied.

ORDER: The appeal is dismissed.