



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

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

In Re: 6416802

Date: JUNE 30, 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) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on her “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (U adjustment application). On appeal, the Applicant submits a statement reasserting her eligibility. The Administrative Appeals Office reviews the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

## I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if she meets all other eligibility requirements and, “in the opinion” of USCIS, 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. The applicant bears the burden of establishing her eligibility pursuant to section 291 of the Act, 8 U.S.C. § 1361, and must do so by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This burden includes establishing that discretion should be exercised in her favor, and USCIS may consider all relevant factors—favorable and adverse—when exercising its discretion. 8 C.F.R. § 245.24(d)(11). The absence of compelling adverse factors may be sufficient to merit a favorable exercise of administrative discretion. See *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970) (stating “[i]n the absence of adverse factors, adjustment will ordinarily be granted, still as a matter of discretion.”). Where adverse factors are present, a U nonimmigrant may submit evidence to establish mitigating equities. 8 C.F.R. § 245.24(d)(11).

## II. ANALYSIS

The Applicant, a native and citizen of Mexico, last entered the United States without inspection, admission, or parole in 2008. In May 2011, the Applicant was the victim of domestic violence and assisted law enforcement in the investigation of the offense. The Director approved the Applicant’s petition for U nonimmigrant status on this basis in October 2013. The Applicant filed the instant U adjustment application in October 2017.

The Director denied the Applicant's U adjustment application. In the decision, the Director acknowledged evidence of the positive and mitigating equities present in the Applicant's case: her steady employment and payment of taxes in the United States; her family ties in the country, including her three children, one of whom is a U.S. citizen; and the fact that she completed a 32-week domestic violence program. However, the Director concluded that the positive and mitigating equities were outweighed by the negative factors in the case; namely, the Applicant's criminal history, which includes an [ ] 2013 arrest for assault with injury and assault on a peace officer, shortly before she was granted U nonimmigrant status. The Director noted that the incident report indicated that the Applicant acted violently toward her boyfriend in front of her three children and then used violence against law enforcement. The incident report reflects that the Applicant broke a beer bottle over her boyfriend's head and scratched him on the face. The boyfriend had a deep laceration on the side of his head requiring stitches or staples. The report additionally indicates that when law enforcement arrived at the scene, the Applicant was belligerent and uncooperative and kicked an officer in the groin area while resisting arrest. Although the charges against the Applicant were ultimately dismissed after she completed a 32-week domestic violence program, the Director noted that the Applicant's actions raised concerns about public safety, the well-being of others and others' property, and showed a disregard for the laws of the United States. Given the violent nature of the Applicant's criminal behavior, the Director concluded that the negative factors outweighed the positive and mitigating equities in the case such that the Applicant did not establish that a favorable exercise of discretion was warranted.

On appeal, the Applicant argues the Director erred by considering her arrest even though she was not convicted of any crime. However, in assessing an applicant's eligibility for adjustment of status as a matter of discretion, USCIS may consider all relevant factors. 8 C.F.R. § 245.24(d)(11). Such factors include evidence of behavior and criminal conduct that does not result in a conviction. *See id.* (stating that USCIS "will generally not exercise its discretion favorably in cases where the applicant has committed or been convicted of" various offenses) (emphasis added); *see also Matter of Thomas*, 21 I&N Dec. 20, 23-24 (BIA 1995) (holding that evidence of criminal conduct that has not culminated in a final conviction may nonetheless be considered in discretionary determinations). As such, even though the Applicant ultimately was not convicted for the assault with injury and assault on a peace officer charges, the Applicant's actions and underlying behavior that led her to be arrested and charged with those crimes are factors that may be considered under our discretionary authority.

The Applicant does not allege error in any other aspect of the Director's decision, and based on the foregoing, she has not overcome the basis for the Director's denial. Moreover, our *de novo* review of the record does not demonstrate that the Director incorrectly assessed or otherwise inappropriately weighed the record below in determining that a favorable exercise of discretion was not warranted. The positive and mitigating equities in the Applicant's case continue to be outweighed by the nature, seriousness, and recency of the Applicant's criminal history.<sup>1</sup> *See Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978) (providing that the "nature, recency, and seriousness" of a person's criminal record are adverse factors to consider in discretionary determinations). The Applicant has not demonstrated that her continued presence in the United States is justified on humanitarian grounds, to ensure family

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<sup>1</sup> A routine search of Department of Homeland Security records additionally indicates that, in [ ] 2020, the Applicant was arrested on a second occasion and charged with driving while intoxicated. This charge remains pending.

unity, or is otherwise in the public interest such that she warrants a favorable exercise of our discretion to adjust her status to that of an LPR. Accordingly, she is ineligible for adjustment of status under section 245(m) of the Act.

**ORDER:** The appeal is dismissed.