U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 2220997

Date: JUL. 18, 2022

Appeal of Nebraska Service Center Decision

Form I-485, Application for Adjustment of Status of U Nonimmigrant

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 Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), concluding that a favorable exercise of discretion was not warranted because the Applicant's positive and mitigating equities did not outweigh the adverse factors in her case. The matter is now before us on appeal. On appeal, the Applicant submits a brief reasserting her eligibility. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, the appeal will be dismissed.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if they meet all other eligibility requirements and, "in the opinion" of USCIS, 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. The applicant bears the burden of establishing their eligibility, 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 their favor, and USCIS may take into account all relevant factors in making its discretionary determination. 8 C.F.R. §§ 245.24(b)(6), (d)(11).

A favorable exercise of discretion to grant an applicant adjustment of status to that of LPR is generally warranted in the absence of adverse factors and presence of favorable factors. *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970). Favorable factors include, but are not limited to, family unity, length of residence in the United States, employment, community involvement, and good moral character. *Id.*; *see also* 7 *USCIS Policy Manual* A.10(B)(2), https://www.uscis.gov/policy-manual (providing guidance regarding adjudicative factors to consider in discretionary determinations). However, where adverse factors are present, the applicant may submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.24(d)(11) (stating that, "[w]here adverse factors are present, an applicant may offset

these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider when determining whether or not a favorable exercise of discretion is appropriate").

II. ANALYSIS

The Applicant, a native and citizen of Mexico, entered the United States without inspection, admission, or parole in September 2006. In October 2016, USCIS granted the Applicant U nonimmigrant status, based on an incident of domestic violence she suffered in 2007. The Applicant timely filed the instant U adjustment application in October 2020. The Director denied the application, determining that the Applicant had not demonstrated that her 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 her criminal history, namely her arrests for driving under the influence (DUI), driving on a suspended license, bringing a controlled substance into a jail and conspiracy to commit a crime, outweighed the positive factors in her 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 16 years. The Applicant's family ties in the United States include her LPR mother and three children, two of whom are U.S. citizens. The Applicant provided evidence of business ownership and payment of taxes in 2016, 2019 and 2020. She also provided evidence that she has completed community college coursework and attended Alcoholics Anonymous (AA) and Mothers Against Drunk Driving (MADD) classes. Additionally, the Applicant submitted medical records indicating that her daughter suffers from Type 1 diabetes and receives ongoing medical treatment for the condition. In her statement, the Applicant explained that her daughter struggles to control her blood sugar and that she is responsible for monitoring her blood sugar levels and administering insulin when needed. In letters of support from friends, family, and former employers, the Applicant is described as a loving mother and a hardworking employee who has learned from her past mistakes. Regarding hardship, the Applicant maintains that she and her children would suffer in Mexico because they would not have the same educational and employment opportunities and legal protections if they were forced to return to the country.

On appeal, the Applicant argues that her three DUI arrests should not "nullify the genuine positive equities and the statutorily enshrined notion of 'family unity' that would be shattered if her [U adjustment application] is denied and [she] is removed" and her children are forced to relocate with her to Mexico. She further argues that that the Director ignored several equitable factors in her case such as the remedial steps she has taken to change her life, the hardship to her children, and the trauma they suffered witnessing their father physically and emotionally abuse her. She maintains that the denial of her U adjustment application would shatter family unity and result in her children becoming wards of the state, neither of which would be in the public interest.

B. Adverse Factors

The Applicant's primary adverse factor is her criminal history. The record reflects that the Applicant was arrested in [redacted] 2014 in [redacted] California for DUI, DUI with a blood alcohol

content of 0.08% or higher, driving while license suspended, and a prior conviction for driving while suspended within five years in violation of sections 23152, 23152(b), 14601(a), 14601(b)(2), and 14601(2) of the California Vehicle Code (Cal. Veh. Code). In her statement, the Applicant explained that she left her three-month old son with a babysitter so that she could attend a concert with a friend. While at the concert, the Applicant decided that she needed to pick up her son and got a ride home to pick up her car. She claimed that she made the "terrible" choice to get in her car and drive to the babysitter's house to pick up her son. She stated that the babysitter never realized that she had a "few drinks in her" because she told her to bring her son outside. She further stated that she decided to drive to her son's father's house to confront him about not seeing his son instead of driving home. When she was unable to contact her son's father, she decided to drive home. A police officer pulled her over. He arrested her for DUI and her son was placed into foster care. She was subsequently reunited with her son four days later. She attended classes and was assigned a social worker who visited her for six months after her DUI arrest. The Applicant pled *nolo contendere* to one count of driving while license suspended and DUI with a blood alcohol content of 0.08% or higher. The remaining charges were dismissed. She was given two years of probation, ordered to serve 18 days in jail, and complete a First Offender Program. She was also ordered to pay all court costs and fines. The Applicant later violated the terms of her probation and was ordered to complete a community service program. She submitted evidence that she completed her community service through the Sheriff's Work Program (SWAP) and paid all court costs and fines.

The Applicant was arrested in [redacted] 2017 in [redacted] for conspiracy to commit a crime, bringing of an illegal substance or alcohol in a jail facility, and possession with intent to deliver, delivering a cell phone in violations of sections 182(a)(1), 4573.5 and 4576(a) of the California Penal Code (Cal. Penal Code). In her statement, the Applicant explained that her partner who was incarcerated at the time told her that he was unable to sleep and adapt to life in jail. He told her that someone would drop off a Ziploc bag with her containing a cell phone and sleeping pills. He asked her to bring the Ziploc bag with her the next time that she visited him in jail. She stated that "against her better judgment" she did as he instructed. She was arrested after she visited her partner in [redacted] 2017. She pled *nolo contendere* to conspiracy to commit a crime. The remaining charges were dismissed. She was given three years of supervised probation, 90 days in jail with two days credited (later modified to home detention monitored by an electronic monitoring device), and ordered to pay all court costs and fines. The Applicant submitted evidence that she completed the electronic monitoring program in [redacted] 2018.

The Applicant was arrested in [redacted] 2019 in [redacted] for DUI, DUI with a blood alcohol content of 0.08% or higher, and a prior DUI conviction within 10 years in violation of sections 23152(a), 23152(b) and 23450 of the Cal. Veh. Code. In her statement, the Applicant explained that she met a friend for a drink at a local club. She further stated that she intended to call an Uber at the end of the night, but realized that she left her phone inside of the club. She returned to the club, but was unable to find her phone. She stated that she made the "stupid" choice of driving home because she wanted to see her children. She was later stopped by the police and transported to the "drunk tank." She was released on supervised own recognizance. She pled *nolo contendere* to driving while under the influence with a blood alcohol content of 0.08% or higher. She also admitted to a prior DUI conviction within 10 years in violation of section 23450 of the Cal. Veh. Code. The remaining charge was dismissed. She was placed on three years of summary probation, 35 days in jail with one day credited, and ordered to pay all court costs and fines. The Applicant subsequently failed to appear in

court with proof of her enrollment in a Multiple Offender Program, and a bench warrant was issued in [redacted] 2021. She later submitted proof of enrollment and the bench warrant was recalled. She also submitted evidence that she completed the 35 days in jail through the SWP, installed an interlock ignition device in her car in [redacted] 2021, and paid all court costs and fines in [redacted] 2021.

Finally, the record reflects that the Applicant was arrested in [redacted] 2021 in [redacted] for DUI with a blood alcohol content of 0.08% or higher. The Applicant did not submit a statement explaining the circumstances that led to this arrest or any court disposition records regarding the arrest.

The Applicant expressed remorse for her criminal history. In statements submitted before the Director, she acknowledged that she has made terrible choices in the past. However, she argues that she is now a responsible person and loving mother who has learned from those mistakes and is deserving of another chance to show that she is a changed woman. She maintains that she is currently focused on following the law, completing all of the court-mandated programs, and supporting her children.

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 she 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, the Applicant has not made such a showing.

We have considered the Applicant's favorable and mitigating equities, including her arguments on appeal. We acknowledge the Applicant's lengthy residence in the United States, her family ties, stable employment, payment of taxes, and efforts at rehabilitation after multiple criminal convictions. We further acknowledge the Applicant's close relationship with her children, one of whom suffers from Type 1 Diabetes and the hardship they would experience if the Applicant is unable to remain in the United States. However, notwithstanding these factors, the Applicant has not demonstrated that she merits a favorable exercise of discretion to adjust her status to that of an LPR.

The Director determined that the Applicant's positive and mitigating equities did not outweigh the adverse factors in her case. Specifically, the Director noted that the Applicant's convictions for conspiracy to commit a crime and more than one DUI after being granted U nonimmigrant status demonstrated a public safety concern, a risk to the well-being and property of others, and a disregard for the laws of the United States. Additionally, the Director noted that it was unclear whether rehabilitation had occurred because the Applicant remained on active probation until [redacted] 2022. As a result, the Director concluded that the Applicant had not submitted sufficient evidence to establish that a favorable exercise of discretion to adjust her status to that of an LPR was warranted in her case.

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 record indicates that the Applicant was cited or arrested five times between 2014 and 2021. She pled *nolo contendere* or admitted to DUI with a blood alcohol content of 0.08% or higher, conspiracy to commit a crime, a DUI with prior DUI conviction within 10 years, and probation violation for failure to enroll in a Multiple Offender Program. We note specifically that driving under the influence of alcohol is both a serious crime that poses a risk to others and a significant

adverse factor relevant to our consideration of whether the Applicant warrants a favorable exercise of our discretion. *See Matter of Siniauskas*, 27 I&N Dec. 207, 208-09 (BIA 2018) (finding DUI a significant adverse consideration in determining a respondent's danger to the community in bond proceedings); *Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (BIA 2019) (discussing the "reckless and dangerous nature of the crime of DUI"). Most critically, the Applicant was recently arrested in [redacted] 2021 for DUI, a crime involving behavior which posed a significant risk to others, after she was granted U nonimmigrant status and while she was pursuing this discretionary adjustment of status application.

Additionally, although the Applicant expressed general remorse for her criminal history and submitted a letter of support from a case manager from [redacted] in [redacted] therapy records, certificates of completion for vocational training and court records confirming that she successfully completed the SWAP and electronic monitoring that she was required to complete, the record as a whole does not establish her rehabilitation. *See Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991)(stating that an applicant for discretionary relief "who has a criminal record will ordinarily be required to present evidence of rehabilitation before relief is granted as a matter of discretion"); *see also Matter of Marin*, 16 I&N Dec. at 588 (emphasizing that the recency of a criminal conviction is relevant to the question of whether rehabilitation has been established and that "those who have recently committed criminal acts will have a more difficult task in showing that discretionary relief should be exercised on their behalf"). Upon *de novo* review, we agree with the Director's determination regarding the Applicant's rehabilitation. The record reflects that the Applicant's active probation for her [redacted] 2019 DUI conviction continued well after she applied to reside permanently in the United States as an LPR. Moreover, the record indicates that the Applicant's first DUI and court-mandated rehabilitation was insufficient to deter her from committing multiple subsequent DUI offenses. The record also indicates that the Applicant violated the terms of her probation for her [redacted] 2019 DUI arrest resulting in the issuance of a bench warrant for her arrest. To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which she was required to comply with court-ordered mandates, but also after her successful completion of them. *See U.S. v. Knights*, 534 U.S. 112, 121 (2001) (recognizing that the state has a justified concern that an individual under probationary supervision is "more likely to engage in criminal conduct than an ordinary member of the community"); *Doe v. Harris*, 772 F.3d 563, 571 (9th Cir. 2014) (noting that, although a less restrictive sanction than incarceration, probation allows the government to "impose reasonable conditions that deprive the offender of some freedoms enjoyed by law abiding citizens")(internal quotations omitted). Finally, while we acknowledge that the Applicant's California driver's license was reinstated, its issuance was conditioned upon the Applicant's use of an ignition interlock device, evidencing that she is still considered to pose a risk to the public. Based on the recency and seriousness of the Applicant's criminal history, she has not sufficiently established her rehabilitation.

To summarize, the Applicant has four convictions for DUI and conspiracy to commit a crime—offenses which posed a significant risk to others-- and has shown a repeated disregard for public safety and the laws of the United States. While we acknowledge the Applicant's arguments on appeal and her evidence of positive and mitigating equities, including her daughter's medical condition and ongoing treatment, they are not sufficient to establish that her continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the severity and recency of her DUI and conspiracy convictions before *and* after she was granted U nonimmigrant

status and insufficient evidence of her rehabilitation in the record. Consequently, the Applicant has not demonstrated that she warrants a positive exercise of discretion to adjust her status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.