



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

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

In Re: 31765680

Date: APR. 25, 2024

Appeal of Vermont Service Center Decision

Form I-485, Application to Register Permanent Residence or Adjust Status

The Applicant seeks to become a lawful permanent resident based on his “U” nonimmigrant status. See Immigration and Nationality Act (the Act) section 245(m), 8 U.S.C. § 1255(m). The U classification affords nonimmigrant status to crime victims, who assist authorities investigating or prosecuting the criminal activity, and their qualifying family members. The U nonimmigrant may later apply for lawful permanent residency.

The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application), concluding that the record contained insufficient proof of rehabilitation after the Applicant’s conviction for the reduced charge of reckless driving, as the Applicant was still on probation for this charge. The Director also noted that additional required evidence had not been provided. The Applicant submitted a motion to reopen to the Director; the Director acknowledged receipt of outstanding evidence, but the case remained denied on discretionary grounds. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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. Applicants must also establish that discretion should be exercised in their favor; 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 an 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 adjustment of status determinations). However, where adverse factors are present, an applicant may submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.24(d)(11) (providing 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”).

The Applicant filed the adjustment application in August of 2020. While the adjustment application was pending, in September of 2021, the Applicant was arrested for driving under the influence. The Director issued a request for evidence (RFE) asking for additional information regarding this offense. In response, the Applicant submitted documentation showing that he accepted responsibility for a reduced charge of reckless driving in [redacted] of 2022. As part of the plea agreement, the Applicant was sentenced to a suspended sentence of 179 days contingent on the successful completion of one year of probation. His driver’s license was suspended for six months, and he was ordered to complete 40 hours of community service. As an additional requirement of his probation, he was ordered to complete a course with the Virginia Alcohol Safety Action Program (VASAP). The Director noted that proof of community service completion had been provided as well as enrollment in VASAP. However, as of the RFE response date, the Applicant had not completed VASAP or the period of probation.

The Applicant filed a motion to reopen with the Director in August 2023, indicating that the period of probation had expired in [redacted] of 2023 and that he had successfully completed the VASAP course. The Applicant submitted statements of support from friends and community members detailing his regret for the criminal charge and good moral character. He also provided a letter from the clerk of court indicating that there were no violations on record and no additional charges appeared on the Applicant’s record. Finally, he provided paperwork showing that his driver’s license had been reinstated. The Director acknowledged these submissions but dismissed the motion to reopen, noting that the provided evidence did not establish “that your term of probation has been satisfied or completed.” Therefore, the Director could not evaluate whether the negative factors in the record had been overcome.

On appeal, the Applicant submits a letter from his criminal defense attorney confirming that probation was successfully completed. His counsel notes that he was not assigned a probation officer as VASAP was the only requirement of probation. Given his completion of VASAP, his probation was successfully completed on [redacted] 2023. The Applicant also submits an updated letter from the clerk of court indicating that the clerk’s office did not receive any violation of probation letters, and “it can be said that [the Petitioner] successfully completed his 12 month probationary period which spanned from [redacted] 2022 to [redacted] 2023.” The Applicant submits an affidavit attesting that he successfully completed probation and has made significant efforts to obtain additional documentation of this completion.

The Director denied the case because the Applicant had not demonstrated that he had completed probation and that, subsequently, his remorse and rehabilitation could not be fully evaluated. Because the evidence submitted on appeal is directly relevant to the Director’s ground for denial of the Applicant’s U adjustment application, we will remand the matter for further consideration of whether

the Applicant has satisfied the requirements of 8 C.F.R. § 245.24(d)(5) and otherwise established eligibility for adjustment of status to that of an LPR under section 245(m) of the Act.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.