U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34941798

Date: NOV. 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 (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on his "U" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). 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 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 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 eligibility. Section 291 of the Act, 8 U.S.C. § 1361. 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 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). Where adverse factors exist, the 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").

Depending on the nature of any adverse factors, the applicant may be required to demonstrate clearly that the denial of adjustment of status would result in exceptional and extremely unusual hardship, but such a showing might still be insufficient if the adverse factors are particularly grave. 8 C.F.R. § 245.24(d)(11). For example, USCIS generally will not exercise its discretion favorably in cases where the applicant has committed or been convicted of a serious violent crime, a crime involving sexual abuse committed upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns. *Id.*

II. ANALYSIS

The Applicant, a native and citizen of Mexico, last entered the United States without inspection, admission, or parole in September 2002. He was granted U-3 nonimmigrant status from September 2015 until September 2019 pursuant to an approved Form I-918 Supplement A, Petition for Qualifying Family Member of U-1 Recipient (derivative U petition) filed on his behalf based on his mother's victimization and assistance to law enforcement. The Applicant's related Form I-192, Application for Advance Permission to Enter as Nonimmigrant (waiver application) was also approved in September 2015. The Applicant timely filed his U adjustment application in July 2019. After considering his response to a request for evidence (RFE), the Director denied the U adjustment application in October 2021, concluding that the Applicant had not established that his adjustment of status to that of an LPR was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest.

We remanded the case on the Applicant's first appeal because he submitted new material evidence the Director had not had the opportunity to review. After reopening the matter and considering the new evidence in the first instance, the Director again denied the U adjustment application. The Director discussed the Applicant's 2010 arrest on multiple charges linked to an allegation that he sexually assaulted a young child while he was a teenager, leading to an adjudication of delinquency for misdemeanor assault on a person less than 13 years of age. At the time of the conduct for which the Applicant was arrested, the Applicant was 13 or 14 years old[1] and the victim was seven years old. The Director determined that the Applicant's charges and juvenile delinquency adjudication were serious negative factors and that he had not submitted sufficient documentation of the conduct that led to the charges. Accordingly, the Director determined that the negative factors outweighed the favorable factors in the case. The Petitioner has not overcome this conclusion on appeal.[2]

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[1] The Applicant was 14 years old when he was arrested in [redacted] 2010. He states he first learned of the accusations against him in November 2009 and that the victim claimed the acts occurred "some time during [the] summer" of 2009. Although he asserted in his RFE response that he was 13 at the time he learned of the accusations, he turned 14 in [redacted] 2009, prior to the date he claims he learned of the accusations. It is unclear from the record whether the conduct that led to the charges against him occurred while he was 13 or 14 years old.

[2] The Applicant argues that the Director should have decided whether he met the statutory and regulatory requirements for adjustment of status before reaching whether he merits a favorable exercise of discretion. The applicable statute specifies that an applicant must meet all other requirements and demonstrate 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. Furthermore, we are not required to reach alternative issues where an applicant has not otherwise met their burden of proof. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory

A. Adverse Factors

The primary adverse factors in this case are the Applicant's 2010 juvenile delinquency adjudication following his arrest on multiple serious charges relating to sexual assault on a young child, and the lack of evidence that the Applicant has fully rehabilitated despite his discharge from probation in 2012.

Records the Applicant submitted from the Family Court of [redacted] Pennsylvania, Juvenile Docket show that he was initially charged with nine offenses: Rape Forcible Compulsion, a first degree felony; Involuntary Deviate Sexual Intercourse Forcible Compulsion, a first degree felony; Sexual Assault, a second degree felony; Indecent Assault on a Person Less than 13 Years of Age, a first degree misdemeanor; Unlawful Restraint/Serious Bodily Injury, a second degree felony; False Imprisonment, a second degree felony; Statutory Sexual Assault, a second degree felony; Recklessly Endangering Another Person, a second degree misdemeanor; and Indecent Exposure, a first degree misdemeanor.

The Applicant was initially arrested and detained in a "Youth Study Center" with the reason for confinement listed as "Serious Charges," and then placed in "Detention Alternative" at home. He was ordered to stay away from the victim and have no unsupervised contact with children under the age of 14. In [redacted] 2010, he was adjudicated delinquent as to the charge of misdemeanor Indecent Assault on a Person Less than 13 Years of Age in violation of Title 18, Pennsylvania Consolidated Statutes (Pa. Cons. Stat.) section 3126(a)(7) and the remaining charges were withdrawn. He was placed on probation, referred to an outpatient treatment center for "Offender Specific treatment," and ordered to pay court costs of $48.50. The records show that at a status hearing in April 2011, the court ordered him to attend a private school, where he remained until discharge from probation in [redacted] 2012.

The derivative U petition filed on the Applicant's behalf disclosed that he had been arrested and adjudicated delinquent and supplied court records showing the charges and dispositions. In his statement in support of his related waiver application, the Applicant discussed his entry without inspection as a child and requested a waiver of inadmissibility based on that conduct. He also addressed his arrest for "charges that [he] sexually assaulted a girl." He stated that he "never did any of the things that she accused [him] of doing" and that a DNA test was negative. He said the attorney who represented him during his juvenile case advised him to plead guilty to one charge, which he understood to be necessary to avoid trial and "drop everything," and that no one advised him about immigration consequences.

The Applicant recalled that he completed court-ordered community service, went to a "probation school," and attended individual and group therapy at an outpatient institute for a year and a half. He stated that "[o]ne problem [he] had in therapy is that [he is] not willing to say that anything happened between [him] and [his] accuser" and he believed "not admitting this held [him] back from discharge" but because "nothing happened . . . there is nothing [he] can say to her without making up a story. [He's] not going to lie." When he was arrested, he thought he had been mistaken for another person and was angry when the victim's parents pressured him to admit to conduct he did not commit. He noted he was voluntarily attending therapy to discuss his feelings about family issues and was "more

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findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach other issues on appeal where the applicant did not otherwise meet their burden of proof).

receptive" to this than his court-ordered therapy because it did not focus on "the criminal accusations against [him], the lies." He stated he did not believe he was inadmissible for his juvenile delinquency but requested that USCIS waive any applicable ground of inadmissibility related to that record.

In response to the Director's RFE on his U adjustment application, the Applicant asserted that he was unable to obtain a copy of the arrest report despite good faith efforts, and that he could not obtain court records beyond the certified docket sheet he previously provided. He submitted the charging document, or Delinquent Petition, per the Director's request, but argued it should be given little to no evidentiary weight because all but one of the charges were withdrawn. The Delinquent Petition alleges that in or about the summer of 2009, the Applicant "did, intentionally and knowingly, expose" himself to the complainant, a seven-year-old child, forced her to touch him without her consent, and "did engage in oral sex with the complainant without her consent."

He also submitted a July 2012 progress update letter to the juvenile court from a therapist at the treatment center he was ordered to attend. The letter notes that at a prior hearing "it was recommended that he be discharged from outpatient program and placed in the partial hospitalization as there were concerns about his level of stability in the community. [He] had begun missing appointments, had been having some problems in school, and appeared generally frustrated and unmotivated to continue in therapy." Following that hearing, the therapist met with the Applicant and decided it would be best for him to "complete a safety plan/relapse prevention plan" and "be discharged at the maximum benefit level." The therapist explained that the Applicant had "struggled with openly speaking about his offense, [but] he takes ownership of the offense," had "demonstrated improvement" in his ability to follow directions, and "demonstrates an understanding of basic consent and safety skills and has been generally stable . . . ." The therapist determined the Applicant's "Overall Risk to Sexually Re-offend is Low to Moderate" but noted that risk factors "which should have changed due to treatment but did not are: his negative peer associations and influences; [his] incomplete sexual offender-specific treatment; the high stress family environment where he witnessed verbal domestic violence and his father is currently incarcerated; and his recent escalation in negative affect." Additionally, the therapist reported that the Applicant "does not reside with any younger children, he denies deviant sexual interest in children, and he denies any other inappropriate sexual behaviors," more than two years had passed since "his one known offense and he does not have access to potential victims."

Accordingly, the therapist advised the court that the Applicant had "met the minimum requirements for discharge and has a basic understanding of risk. He did not complete the apology letter and therefore a maximum benefit discharge is being recommended . . . ." Further, the therapist noted that the Applicant could benefit from general mental health therapy; should "continue to have no unsupervised contact with pre-pubescent children or other vulnerable persons and should not have any contact with the victim"; should "continue to have no unsupervised access to the Internet"; and "parental locks should remain on all televisions and computers in the home in order to minimize [his] exposure to adult content."

In a supplemental personal statement with his RFE response, the Applicant stated in pertinent part that he sometimes accompanied his mother to her job cleaning the home of the victim's mother. He stated he and the victim would play outside together and watch movies, and "[a]s far as [he] can remember, the extent of the physical contact that [they] had was when she would climb on top [his] back and [he] would crawl around like a pony – she thought that was funny" and he "thought it was an innocent

game." The Applicant recalled that sometime after his mother stopped working for the victim's family, the victim and her mother confronted him and said "that while they had been watching a movie, [the victim] commented during a sexual scene that she 'had done that'." When the victim's parents questioned her further, she said the Applicant had made her touch him sexually one time. He stated he did not hear about the oral sex accusation until it appeared in the charging document. The Applicant thought the victim was confused, joking, or had accused him for someone else's conduct, and he was surprised to be arrested later. He claimed he accepted the plea deal on his attorney's advice because he did not feel he and his family could endure the stress of trial and believed the charge to which he pled guilty was not too serious and would not impact him once the records were expunged. The Applicant stated he cannot admit the accusations because they are not true, but he does "understand the seriousness of the charges against [him] . . . and [he] feel[s] like [he] took responsibility for what [he] was accused of."

In support of his first appeal, the Applicant submitted the [redacted] Police Department Investigation Report (police report) relating to his arrest. The police report states that the victim was interviewed by an officer of the Special Victims Unit and a forensic interviewer and informed them that on two occasions, the Applicant stuck his hand down her pants and touched her, unzipped his pants and had her touch him, and kissed her on the lips. The victim was treated at a children's hospital. The victim subsequently requested a second interview with investigators in order to report that on the second incident, the Applicant took her to the underground garage of her home and told her to pull down her pants and underwear, sit on the stairs, and spread her legs. Once she complied, he performed oral sex on her.

In his statement in support of his present appeal, the Applicant states he "accepted a plea deal that said [he] had done something that [he] did not do," but only because he felt going to trial would have negative impacts on his mother's health and finances. He provides a new psychological evaluation issued in July 2024 which states, in part, that the Applicant reported being falsely accused of sexual assault against the young daughter of his mother's employer. He told the evaluator that "the child was evaluated and the girl had made a lot of different very strange claims about seeing dead people and talking to her dead grandmother but the charges were not dropped." Additionally, the Applicant told the evaluator that "[w]hen he went to court, he was told by the judge the family wanted $10,000 in restitution and it was clear that the judge thought that the case seemed odd. Eventually, [the Applicant] found out the family was in bankruptcy and the family was making a lot of claims that the judge found suspicious." He informed the evaluator that when he told his court-ordered therapist he did not commit the offense, "they would say that he was in denial" and should face what he did to avoid reoffending later. He felt he did not get anything out of the court-ordered therapy because it was focused on the fact that "he was assumed to be a juvenile sex offender." The psychological evaluation reflects that the Applicant found the arrest and charges humiliating, the process impacted his social and personal life, and he often rethinks his decision to accept a guilty plea.

As additional supporting evidence, he now submits a scholarly article stating that studies show rates of sexual recidivism of juvenile offenders are generally low and that commission of a sex offense as an adolescent does not reflect a propensity or likelihood of becoming a sex offender in adulthood. He also provides an article discussing plea bargains for juveniles, finding that developmental and social factors may increase an adolescent's risk of involuntarily accepting a plea bargain, and another article stating that people are often "coerced into pleading guilty."

B. Positive and Mitigating Equities

The record reflects that the Applicant has resided in the United States since 2002, when he was seven years old. He wants to stay in the United States because he has lived here for most of his life, lacks connections in Mexico and does not feel safe or familiar with the culture there, and requires medical care he thinks would be unavailable in Mexico. He previously submitted medical records showing he takes medication for allergies and was diagnosed with a mass on his foot, vascular malformation, hypertension, hyperlipidemia, mucocele of ethmoid sinus, sciatica, sinus tachycardia, and obesity. On appeal, he also states he suffers from chronic back pain due to a car accident. He states he does not currently receive medical care due to a lack of health insurance but would like to have access to such care.

The Applicant states he enrolled in a GED program but was unable to take the test because he did not have a social security number. He has been employed and worked various jobs until starting his own construction business in 2018 but was unable to work for a period after being injured in a car accident in April 2019. In support of his present appeal he submits a letter from his employer, for whom he has worked since April 2024. The employer states the Applicant is a reliable employee with a strong work ethic and he believes the Applicant is "a good citizen with a strong moral value . . . ." The Applicant has provided, below and on appeal, other letters of support from family friends and members of his community. The director of a community organization that provides mental health resources for immigrant youth states he was an active participant in programming there starting in 2013 and that the staff have seen "him grow and mature into a deeply responsible, ethical and caring young man" and a "trusted and dependable community member . . . ." On appeal he provides a letter from his church stating he is in good standing.

Evidence shows the Applicant contributes significantly to his shared household with his mother and provides her with financial support. He has submitted their lease and other financial records, as well as photographs of them together. The record also demonstrates that the Applicant assists his mother with multiple daily tasks, and she depends heavily on him for translation, transportation, physical and emotional support, and assistance managing her mental and physical health diagnoses. Medical records indicate she has been treated for temporary facial paralysis caused by Bell's palsy, headaches, Type 2 diabetes, high cholesterol, obesity, cataracts, severe neck and shoulder pain, carpal tunnel syndrome, and other health issues. She underwent a biopsy for a mass in her right breast, which was not found to be cancerous but requires monitoring. The Applicant's attorney conducted a brain injury screening on the Applicant's mother and concluded that she may have a traumatic brain injury.[3] The Applicant's mother indicated in a statement that she had also been treated for arthritis and vision loss and emphasized her close bond with the Applicant and her concern over a potential separation from him. The Applicant does not believe his mother could survive in the United States without him and has stated that she would likely accompany him to Mexico to avoid being separated. But they lack close ties there and he worries about safety, employment opportunities, financial security, and other aspects of life in Mexico. He indicates the immigration process has been very difficult and stressful for him and his mother.

[3] The record does not reflect that the attorney's conclusion was verified by a medical professional or that the Applicant's mother sought medical care for this issue.

The record further shows that the Applicant's close bond with his mother is partly due to the support they provided each other in the face of abuse by the Applicant's father. The Applicant's mother received U nonimmigrant status as the result of domestic violence by the Applicant's father, who was arrested and deported for violating a protective order in 2010. The Applicant witnessed physical and psychological abuse against his mother and indicates in his statement on appeal that his father also yelled at him, threatened to kill him, and sometimes pushed him when he tried to intervene to prevent harm to his mother. The Applicant also states that his mother sought his advice on whether to report the abuse and he had to help her call the police and file a report because she did not speak English. It was traumatic for him to participate in the process that led to his father's deportation, and he feels it puts him at risk of harm from his father if he returns to Mexico. He received threats from his father while his father was in jail and continues to fear him. Additionally, he notes that he lacks a support system in Mexico, feels he would put relatives there at risk of harm by his father if he tried to live with them, and fears he would be vulnerable to other violence there. He also had to take over his father's household and financial responsibilities as a teenager. The emotional impact of his father's absence was complex, as he missed having a male role model but was also angry at and continues to fear his father. He voluntarily attended therapy in 2013 or 2014 to discuss these issues.

The Applicant also submits on appeal a copy of his mother's prior statement submitted in support of her U petition, in which she detailed the abuse by her ex-spouse. Additionally, he provides a 2024 psychological evaluation for his mother discussing her history as a domestic violence victim, other history of trauma, medical and psychological issues, and stress related to the possibility that the Applicant will be unable to stay in the United States. In her supplemental statement on appeal, the Applicant's mother reiterates the domestic violence by her ex-spouse and the support the Applicant has provided to her. She emphasizes her close bond with the Applicant and her strong concerns about a potential separation or relocation.

Furthermore, the Applicant has submitted evidence of his own mental health difficulties. He previously provided a 2020 psychological evaluation stating, in part, that the Applicant met the diagnostic criteria for posttraumatic stress disorder (PTSD) and adjustment disorder with mixed anxiety and depressed mood. A new psychological evaluation submitted in support of the present appeal indicates that he meets the diagnostic criteria for PTSD, target of (perceived) adverse discrimination or persecution, victim of crime, problems related to past legal circumstances, and personal history of childhood psychological abuse. We acknowledge the Applicant's statements and other evidence showing he experienced trauma in childhood, worries about his immigration situation and its potential impact on himself and his mother, and has suffered symptoms relating to his mental health diagnoses. He has made efforts toward reducing the effect of these issues on his life. On appeal he also submits articles discussing the prevalence of femicide in Mexico and the negative psychological and physical impacts of childhood exposure to domestic violence.

Finally, the Applicant has demonstrated some progress toward rehabilitation. We recognize that his arrest occurred in 2010 and that his last contact with the juvenile or criminal justice system was in 2012. He completed the minimum requirements for discharge from probation and the evidence indicates he has been a productive member of his community since that time. He also disclosed his juvenile delinquency adjudication on his derivative U petition and related waiver application.

C. A Favorable Exercise of Discretion is Not Warranted

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.

We have considered the positive and mitigating factors in this case. We acknowledge the Applicant's long residence in the United States since he was a young child, his close bond and mutual dependence with his LPR mother, support from members of his community, his lack of family ties or other supports in Mexico, his need for medical care, and his history of employment. He has also provided some evidence that he could experience hardship if he were to return to Mexico, particularly relating to his fear of his father, and evidence that his LPR mother would likely suffer hardship if she accompanied him there.

Additionally, we recognize that the Applicant witnessed domestic violence by his father against his mother, suffered verbal abuse by his father, and was personally impacted in multiple and complex ways by his father's abuse, arrest, and deportation. Not only did the Applicant have to stop attending school to assume financial and other responsibilities his father had once managed, but he has been emotionally affected by his father's behavior, absence from his life, and potential ability to harm him in the future. Finally, the Applicant completed the terms of his probation, has not had any other contacts with the juvenile or criminal justice system since 2012, and previously disclosed his juvenile delinquency history.

However, the positive and mitigating factors here are outweighed by the severe nature of the Applicant's adjudicated juvenile offense and the lack of evidence that he was fully rehabilitated, despite the passage of time. 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 reflects that the offense for which the Applicant was adjudicated delinquent, Indecent Assault on a Person Less than 13 Years of Age in violation of 18 Pa. Cons. Stat. section 3126(a)(7), is categorized as a sexual offense under Pennsylvania law. *See* 18 Pa. Cons. Stat., Chapter 31. A person is guilty of indecent assault if that person "has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant." 18 Pa. Cons. Stat. section 3126. Although the offense for which the Applicant was adjudicated delinquent was a misdemeanor, the definition and its classification as a sexual offense demonstrate its seriousness.

The Applicant accepted a plea resulting in his adjudication as delinquent as to this offense for conduct committed upon a seven-year-old child. The age of the victim, and the age difference between the Applicant and the victim, are strong negative factors. The severity of the offense is also reflected in applicable U adjustment regulations, which provide that for crimes involving sexual abuse committed against a child, USCIS will not generally exercise its discretion in favor of an applicant who has committed or been convicted of such an offense. 8 C.F.R. § 245.24(d)(11). Although the Applicant denies the accusations and maintains that he only accepted a plea deal to avoid the stress of trial and because he was not properly advised of the consequences, we cannot go behind the juvenile court

records to readjudicate whether the Applicant was properly found delinquent. *See Matter of Rodriguez-Carillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (holding that unless a judgement is void on its face, an administrative agency cannot go behind the judicial record to determine a noncitizen's guilt or innocence).

Furthermore, the other eight charges against the Applicant were of a very severe nature, and the related police report reflects extremely serious conduct involving sexual acts committed upon a young child six or seven years younger than the Applicant. We acknowledge that the Applicant was not adjudicated delinquent on any of the other charges, as they were withdrawn as part of the plea agreement. The Applicant argues that the Director erred in giving any weight to the police report because police reports are inherently biased and that the police report in this case includes inadmissible hearsay. He contends that records of his own police interview and DNA test were not released to him but contain exculpatory evidence, and that the police in this case may have been racially biased. However, we must adjudicate this case based on the record before us, and our review is constrained by the evidence the Applicant has provided. While we acknowledge the Applicant's explanations as to difficulties he experienced in obtaining certain documents, he has had multiple opportunities to provide relevant evidence to support his claims. Aside from statements from the Applicant and his mother denying the allegations against him, the only evidence of the specific conduct that led to the charges and delinquency adjudication is the charging document and the police report.

We may properly consider police reports in our exercise of discretion, and the record does not establish that the police report in this case should be viewed as unreliable. *See Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing *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)). As applicable in this case, the Third Circuit Court of Appeals has noted that "[w]here arrest reports lack independent corroboration" or a conviction, adjudicators "should be 'hesitant' to credit them with 'substantial weight' in an equitable balancing analysis. . . . That is a sliding scale, not a categorical ban." *Doyduk v. Att'y Gen. United States*, 66 F.4th 132, 137 (3d Cir. 2023) (citing *Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995)). We are permitted to analyze the entirety of a record, including arrest reports, and assign such evidence appropriate, but not undue, evidentiary weight when reaching a discretionary determination. Here, the allegations in the police investigative report, in which a seven-year-old child informed specially trained interviewers of serious sexual activity committed upon her, led to the Applicant's delinquency adjudication for Indecent Assault on a Person Less than 13 Years of Age, a sexual offense under state law.

The Applicant argues that the Director improperly punished him for a juvenile delinquency adjudication that occurred when he was 14 years old, over 14 years ago, by placing undue weight on that adjudication and incorrectly treating it as a crime. He cites *Matter of Devison-Charles*, 22 I&N Dec. 1362, 1365 (BIA 2000) in support of his contention that the language at 8 C.F.R. § 245.24(d)(11) preventing a favorable exercise of discretion in cases where there has been a crime involving sexual abuse committed upon a child cannot apply here because juvenile offenses are not crimes for immigration purposes. The Applicant additionally highlights pertinent case law from the U.S. Supreme Court, including *Miller v. Alabama*, 567 U.S. 460, 473 (2012), *Roper v. Simmons*, 543 U.S. 551 (2005), and *Montgomery v. Louisiana*, 577 U.S. 190, 208 (2016). These cases generally recognize that children under age 18, in the context of criminal sentencing, have reduced culpability for bad

conduct because they are more easily influenced by others and have less ability to understand the consequences of their actions than adults.

Further, the Applicant cites *Cabeda v. Att'y Gen. United States*, 971 F.3d 165, 173 in arguing that indecent assault under 18 Pa. Cons. Stat. section 3126 is not categorically a crime of sexual abuse of a minor. However, the court in *Cabeda* evaluated whether the respondent was removable for having committed an aggravated felony, a question not at issue here. Similarly, though he cites to *Vartelas v. Holder*, 566 U.S. 257, 275 (2012), in arguing that we must look for a record of conviction to determine whether he committed a crime, the Court in that case was determining whether the respondent had committed a crime involving moral turpitude. Although he argues that "a crime must meet the federal definition of 'sexual abuse of a minor' to fall into the category of cases" contemplated at 8 C.F.R. § 245.24(d)(11), he does not cite binding precedent that specifically supports this claim.

Although we acknowledge the legal provisions and case law highlighted by the Applicant, discretionary determinations in U adjustment applications are guided by section 245(m)(1)(B) of the Act and 8 C.F.R. § 245.24(d)(11), which provide us with the authority to consider all relevant factors in determining whether an applicant warrants a favorable exercise of discretion. As we have noted, the fact that the Applicant was 13 or 14 years old when he committed indecent assault, a sexual offense under Pennsylvania law, on a child only seven years of age is a severe negative factor. The Board of Immigration Appeals held in *Matter of Devison-Charles* that juvenile delinquency adjudications are not criminal proceedings, and therefore not included within the meaning of the term "conviction" under the Act. However, juvenile offenses are factors relevant to the determination of whether a favorable exercise of discretion is warranted. *See Castro-Saravia v. Ashcroft*, 122 Fed. Appx. 303, 304-05 (9th Cir. 2004) (concluding that *Matter of Devison-Charles* does not preclude consideration of juvenile delinquency when making a discretionary determination). *See generally Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996) (including, in adverse factors relevant to discretionary relief, "the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident"). Finally, irrespective of whether the Applicant's actions constitute a "crime" involving sexual abuse, the language of 8 C.F.R. § 245.24(d)(11), which specifically designates acts involving sexual abuse committed upon a child as extremely serious, highlights the severity and significance of such conduct.

The Applicant further asserts that the Director failed to address his argument that he and his mother would suffer exceptional and extremely unusual hardship if his application were denied. We have considered the evidence of potential hardship in this case. However, even if he had established exceptional and extremely unusual hardship, such a showing is typically insufficient where the adverse factors are particularly grave, including in cases like this one involving sexual abuse committed upon a child. 8 C.F.R. § 245.24(d)(11).

Additionally, the record lacks evidence that the Applicant has fully rehabilitated. Although he was discharged from probation in 2012 after a determination that he had complied with the requirements, the letter from his therapist noted that he required maximum support upon discharge because he had not written an apology letter and had difficulty speaking about his offense, and that several risk factors "should have changed due to treatment but did not," including a failure to complete sexual offender-specific treatment, negative peer associations, and "escalation in negative affect." The therapist noted that he met only the "minimum requirements" for discharge and that his risk of reoffending was low

to moderate, requiring that he still have no contact with young children and continue to be monitored when using the internet and television. The therapist highlighted the Applicant's lack of access to potential victims when recommending discharge. Furthermore, the Applicant continues to deny all charges and has repeatedly suggested that the young victim of the sexual offense for which he was adjudicated delinquent made a false accusation against him. The new psychological evaluation he submits on appeal contains multiple accusations against the credibility and motives of the victim which are not otherwise supported by the record and do not reflect that the Applicant truly takes responsibility for his offense. It also reiterates statements the Applicant has made that he did not get anything out of his court-ordered therapy, a required element of his probation.

The Applicant also now submits a letter of support from a former teacher at the school he attended as part of his probation. The teacher states the Applicant's past involvement with the juvenile justice system does not define him and "[h]e has taken full accountability for his past mistakes and has dedicated himself to personal growth and rehabilitation." Further, the teacher claims he can "attest to [the Applicant's] genuine remorse for his actions and unwavering determination to make amends" and that he has made "significant progress since his youthful indiscretions" and is a productive member of society. A family friend similarly states she is aware that the Applicant "has a past incident from childhood" but he "was a child when the incident occurred, and . . . children can make mistakes that they later deeply regret." She asserts that the Applicant "has taken full responsibility for his actions and has worked tirelessly to make amends," and has contributed to his community. Although we have considered these letters, they do not acknowledge that the Applicant continues to deny allegations for which he was adjudicated delinquent. Contrary to the claims in both letters, the record does not reflect that he has worked to make amends to his victim but instead that he completed only the minimum requirements to be discharged from probation, refused to write an apology letter that was part of his court-ordered treatment, and continues to deny responsibility.

In another letter of support, a family friend states that the Applicant is kind, helpful, and "always good." The family friend states the Applicant was the victim of an "unjust accusation" and that "many people that know him [know] that it is not true." The writer emphasizes how much the Applicant's mother depends on him for support and opines that he deserves to stay in the United States. Another family friend writes that she is aware of "the problem that he had as a minor, but he did everything the law required" and has been a person of good character upon whom his mother and others depend. However, these letters do not specify whether the writers know the details of the charges against the Applicant or acknowledge that the Applicant was not only accused but adjudicated delinquent of indecent assault on a person under the age of 13.

Contrary to the claim that many people know the allegations against the Applicant are not true, the Applicant has indicated that he has not told others about the accusations. The psychological evaluation he submits on appeal states that although he was in a serious relationship with someone for five years and would have married her if not for the requirement that he be unmarried as a holder of U-3 derivative status, he never told her what the charges were; he has struggled to maintain friendships because he is ashamed to tell people about his juvenile delinquency history; and the only person who knows about the charges aside from his parents and attorney is one family friend. The letters he submits do not reflect that the writers have personal knowledge of the Applicant's actual adjudicated offense rather than a general awareness that he was subject to juvenile charges that he claims are false.

Finally, we will address the Applicant's assertion that his offense was waived at the time his U petition and related waiver application were approved, and that it is improper for USCIS to deny his U adjustment application based on conduct we already considered. He asserts that the waiver provision under section 212(d)(14) of the Act, which requires a showing that a waiver would be in the public or national interest, is "a much narrower standard" than the U adjustment statute at section 245(m) of the Act, which requires that an applicant's "continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." Therefore, he contends that if the Director found a waiver to be in the public or national interest pursuant to section 212(d)(14) of the Act, we must also conclude that he meets the requirements of section 245(m), which he argues is broader, or explain why the same facts merit a denial at the U adjustment stage.

Although the Applicant disclosed his delinquency adjudication at the U petition stage, no waiver of inadmissibility was requested or granted on a ground relating to that offense. In response to the question in the waiver application labeled "I believe that I may be inadmissible to the United States for the following reason(s) and no others," he specifically requested a waiver for inadmissibility under section 212(a)(6)(A)(i) of the Act due to his entry without inspection at age seven. He also requested "a waiver for any grounds of inadmissibility that the government believes applies to [him], of which [he is] currently unaware." The approved waiver application indicates that a waiver of inadmissibility for presence without inspection or parole under section 212(a)(6)(A)(i) of the Act was granted. In his brief in support of his first appeal, the Applicant stated that "[i]t is unclear whether the USCIS found [him] to be inadmissible on account of any juvenile delinquency acts at the time of his U visa adjudication." The record does not support his current argument that a waiver was granted based on his juvenile delinquency.

And regardless of whether the Director previously considered the Applicant's juvenile delinquency history, a U adjustment application is a separate adjudication and USCIS is not bound by its prior decision concerning a waiver application. Rather, in making a discretionary determination in U adjustment proceedings, USCIS may take into account all relevant factors. 8 C.F.R. § 245.24(d)(11). Section 212(d)(14) of the Act and 8 C.F.R. § 212.17 (regarding waivers of inadmissibility for U nonimmigrants) articulate and implement a legal standard for a nonimmigrant status that is distinct from section 245(m) of the Act and 8 C.F.R. § 245.24(d)(11) (regarding the exercise of discretion for U adjustment applicants), which affords lawful permanent residency.

We have considered all of the evidence in the record, weighed the favorable, mitigating, and negative factors, and explained why the Applicant has not met his burden of demonstrating that his continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest, as section 245(m) of the Act requires. Accordingly, he has not demonstrated eligibility for a favorable exercise of discretion, and he cannot meet the requirements for U adjustment of status.

ORDER: The appeal is dismissed.