U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21880681

Date: APR. 22, 2022

Appeal of Vermont Service Center Decision

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

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(l), based on his "T" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence and Adjust Status (T adjustment application), concluding that the Applicant did not establish that he warranted adjustment of status to that of an LPR as a matter of discretion. The matter is now before us on appeal. On appeal, the Applicant submits a brief and additional evidence and asserts that the Director's decision was in error. 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, we will dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of applicants admitted to the United States as a T nonimmigrants to that of an LPR provided that a series of eligibility requirements have been met. Section 245(l)(1) of the Act; 8 C.F.R. § 245.23(a), (e)(3). Applicants bear the burden of proof of demonstrating eligibility by a preponderance of the evidence, including that discretion should be exercised in their favor. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.23(e)(3); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

A favorable exercise of discretion 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, the applicant may submit evidence establishing mitigating equities. *See* 8 C.F.R. § 245.23(e)(3) (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").

II. ANALYSIS

The Applicant, a citizen of El Salvador, entered the United States without inspection, authorization, or parole in December 2013, when he was 17 years of age. In July 2015, the Director approved his application for T nonimmigrant status. The instant T adjustment application was filed in October 2018.

In denying the T adjustment application as a matter of discretion, the Director acknowledged the positive and mitigating equities present in the Applicant's case such as his attainment of a high school diploma, his employment since 2016, and his payment of taxes in the United States. The Director also acknowledged two reference letters describing the Applicant as a hardworking, caring, patient, kind, and respectful person, but noted that neither of these two letters indicated an awareness of the Applicant's arrests or knowledge of the circumstances which led to such arrests. The Director likewise acknowledged the Applicant's submission of evidence documenting his completion of a court ordered Driving While Intoxicated (DWI) education program which, while considered a positive factor, was determined to not be sufficient evidence of the Applicant's rehabilitation. However, the Director determined that these positive and mitigating equities were outweighed by the nature, recency, and seriousness of the Applicant's criminal history, which includes three arrests, two for assault involving bodily harm—specifically Assault Family Violence in 2018, and Assault with Injury Family Violence in 2019—and the other for DWI in 2020,[1] all of which occurred during the time he held T nonimmigrant status. The Director acknowledged that the charges stemming from the Applicant's arrest in 2018 were dismissed but highlighted that the reason for the dismissal was because the victim requested dismissal. The Director further noted that the 2019 Assault Family Violence and 2020 DWI charges remained pending at the time of the decision. The Director therefore concluded that the Applicant had not submitted sufficient evidence to show that his adjustment of status to that of an LPR was warranted as a matter of discretion.

Upon *de novo* review, we adopt and affirm the Director's decision for the reasons set forth in that decision with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (stating that the "independent review authority" of the Board of Immigration Appeals (Board) does not preclude adopting or affirming the decision below "in whole or in part, when [the Board is] in agreement with the reasoning and result of that decision"); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (noting that, "if a reviewing tribunal decides that the facts and evaluative judgment prescinding from them have been adequately confronted and correctly resolved by" the decision below, "then the tribunal is free to simply adopt those findings" provided the tribunal's order reflects individualized attention to the case"); *Banea v. US INS*, 166 F.3d 1208, *2 (4th Cir. 1998) (adopting the reasoning of *Chen*).

On appeal, the Applicant states, through counsel, that he has two siblings and both of his parents here in the United States and they are relying on the approval of his application to obtain their residence, and he and his fiancé have a strong bond since they have been together for many years. The Applicant

[1] As detailed accurately by the Director in the denial decision, police reports in the record indicate that the circumstances of all three of the Applicant's arrests involved his over-consumption of alcohol and resultant criminal behavior while intoxicated to include DWI and family violence. The police reports further indicate that the Applicant's statements regarding the two incidents of family violence differ from the statements provided by his girlfriend, who was the witness as well as the victim in each of these altercations.

states that when taking these factors into consideration the positive factors outweigh the negative factors and therefore his application should be approved. With regard to his two arrests on charges involving family violence, the Applicant states through counsel that he has explained that these incidents "are unfortunate misunderstandings on behalf of the police." The Applicant further asserts that a single DWI charge is not grounds for denial of his application. Additional evidence submitted by the Applicant on appeal includes five letters from acquaintances attesting to his positive qualities, the birth certificates of both his parents and his two brothers, and court documentation showing that the second charge of family violence against him was dismissed in [redacted] 2020 "[p]ending further investigation."

We acknowledge, and have considered, the additional evidence submitted on appeal, including the evidence of the Applicant's family ties in the United States and the dismissal of the 2019 Assault Family Violence charges. However, this evidence is insufficient to establish that a favorable exercise of discretion is warranted. As a preliminary matter, the dismissal of the 2019 charges as "[p]ending further investigation" does not establish, as highlighted by the Director, where the truth lies or that the underlying conduct, as provided for in the relevant police report, did not in fact occur. We further note that, at the time of filing his appeal, the DWI charges remained pending and he has, to date, not provided the final disposition for the same. Furthermore, although the record indicates that the Applicant completed a Texas DWI Education Program of unknown length and curriculum, he has not shown any expression of remorse for his DWI arrest nor taken responsibility for his family violence arrests which the police reports indicate, and the Applicant likewise acknowledges, also involved alcohol. Regarding his DWI arrest, in response to a request for evidence from the Director, the Applicant simply stated:

> In 2020, I was driving north bound on [redacted] in [redacted] TX, around midnight. I momentarily pulled over to check my GPS. When I tried to put the car in drive again I accidently left it in 3rd gear. As I started driving on the freeway the car would not accelerate to the proper speed. This is when the police pulled me over. They said I was going to slow. They I asked if I had been drinking and I said yes. They arrested me for driving while intoxicated . . . .

As noted by the Director, the arrests report(s) in the record show conflicting statements from both the Applicant and his fiancé regarding the family violence arrests. Such conflicting statements were highlighted by the arresting officers and these inconsistencies remain unresolved. Again, the Applicant has shown no remorse for his DWI arrest and the incident report indicates that he refused to submit to a breathalyzer test after failing numerous field sobriety tests administered by the arresting officer. Finally, the information provided in the arrest report by the police officer for the Applicant's DWI arrest differs significantly from the Applicant's account referenced above.

Reliance on an arrest report in adjudicating discretionary relief—even in the absence of a criminal conviction—is permissible provided that the report is inherently reliable and its use is not fundamentally unfair. *See Matter of Grijalva*, 19 I&N Dec. 713, 722 (BIA 1988) ("[T]he admission into the record of . . . information contained in the police reports is especially appropriate in cases involving discretionary relief . . . , where all relevant factors . . . should be considered to determine whether an [applicant] warrants a favorable exercise of discretion."). In this case, there is nothing in the relevant arrest reports to suggest that their use would be fundamentally unfair. Instead, the contents

of the reports—and the fact of the Applicant's arrests themselves—are highly probative, as they bear on his present eligibility for adjustment of status to that of an LPR. *See Perez v. Barr*, 927 F.3d 17, 20 (1st Cir. 2019) (stating that, in the context of discretionary eligibility for cancellation of removal relief under section 240A(b) of the Act, "an immigration court may generally consider a police report containing hearsay when making a discretionary immigration decision, even if an arrest did not result in a charge or conviction, because the report casts probative light on [the individual's] character" (citing *Mele v. Lynch*, 798 F.3d 30, 32 (1st Cir. 2015)).

Upon review of the record in totality, considering the Applicant's multiple arrests, including charges for family violence and DWI, as well as insufficient evidence of the specific circumstances behind each arrest and the Applicant's remorse and/or rehabilitation, the positive and mitigating equities in his case remain outweighed by the adverse factors. Accordingly, a favorable exercise of discretion is not warranted.

III. CONCLUSION

On appeal, the Applicant has not overcome the grounds for denial of his application, as he has not demonstrated that the Director failed to consider, or otherwise inappropriately weighed, the evidence in determining that a favorable exercise of discretion was not warranted to adjust his status to that of an LPR. He therefore has not established his eligibility for adjustment of status under section 245(l) of the Act.

ORDER: The appeal is dismissed.