U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25334957

Date: APR. 11, 2023

Appeal of Vermont Service Center Decision

Form I-485, Application to Adjust Status

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 her "T-3" 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 she 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 declaration and criminal documentation and asserts that the Director's decision was in error. This 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, the appeal will be dismissed.

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of applicants admitted to the United States as a T nonimmigrant 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). 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 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, 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").

The Applicant, a citizen of Mexico, entered the United States without inspection, authorization, or parole in 1999, when she was less than two years old. In March 2016, the Director granted the Applicant T-3 nonimmigrant status based on her family member's victimization as a result of human trafficking. She filed the instant T adjustment application in October 2019.

In July 2022, the Director denied the Applicant's T adjustment application. The Director acknowledged the positive and mitigating equities present in the Applicant's case: her long-term residence in the United States; payment of taxes; church membership; history of employment; support letters from friends and her godmother attesting to her responsible, honest, and hard-working nature; and family ties in the United States, including her U.S. citizen children and her lawful permanent resident mother.[1]

However, the Director determined that the positive and mitigating equities were outweighed by the adverse factor of the Applicant's criminal history. As detailed by the Director, the Applicant was arrested in [redacted] 2020, while the instant T adjustment application was pending, and charged with three counts of Felony Child Cruelty-Possible Injury/Death. The felony complaint document stated that the Applicant "did willfully and unlawfully, under circumstances likely to produce great bodily harm and death, injure, cause, and permit" her three children (an infant, a toddler, and a minor as stated in the complaint) "to suffer and be inflicted with unjustifiable physical pain and mental suffering" while in the Applicant's care and custody, and "injure, cause, and permit" the children to be placed in a situation where their "person and health is endangered." The record indicates that the Applicant plead guilty to a lesser charge of misdemeanor abandonment and neglect of children under § 273a(b) of the California Penal Code.[2] She was placed on probation under February 9, 2025, and required to complete 42 hours of parenting classes.

In addition to the nature, seriousness, and recency of the above-referenced arrest and convictions, the Director noted that while the Applicant had submitted court documents, she had failed to provide the police report for her arrest, evidence of completion of her sentence, a statement in her own words describing the circumstances that resulted in her 2020 arrest, and a statement addressing why her continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest.[3] The Director concluded that the record did not suffice to establish that the Applicant's continued presence in the United States was justified on humanitarian grounds, to ensure family unity, or was otherwise in the public interest such that she warranted a positive exercise of discretion to adjust her status to that of an LPR.

On appeal, counsel for Applicant states that she is on summary probation and has not violated the terms of her probation and has completed the parenting classes the court ordered her to take. Counsel also maintains that the documentation they submitted regarding the arrest "is all the documentation

[1] We also acknowledge the Applicant's expressions of remorse for her criminal activity, the hardships she and her children would experience if the Applicant was unable to remain in the United States, and her enrollment in parenting classes.

[2] California Penal Code § 273a(b) states the following: Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

[3] This documentation was requested by the Director in the August 2021 request for evidence.

that is available for the arrest from the court." Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. The Applicant also submits a declaration, explaining what happened leading to her arrest, expressing remorse for her actions, and detailing the hardships she and her children would experience if she were to return to Mexico.

We adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS,* 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS,* 87 F3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case.")

To begin, 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 e.g.*, *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."). The Applicant has not submitted evidence indicating that she attempted, but was unable, to procure them. In the absence of additional information or documentation which allows us to properly and fully consider the basis for and specific facts surrounding the Applicant's arrests, such as the underlying arrest report, records, or transcripts documenting her subsequent criminal proceedings, there is insufficient evidence to establish that her arrest in 2020 and the serious charges that resulted should not be considered as adverse factors in her case or, alternatively, that lesser weight should be accorded to such evidence.

Moreover, 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." *Matter of Roberts*, 20 I&N Dec. 294, 299 (BIA 1991); *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"). To determine whether an applicant has established rehabilitation, we examine not only the applicant's actions during the period of time for which he or she was required to comply with court-ordered mandates, but also after the 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"). Further, when an individual is on probation, he or she enjoys reduced liberty. *See, e.g., 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); *U.S. v. King*, 736 F.3d 805, 808-09 (9th Cir. 2013) ("Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled.") (internal quotations omitted). In this case, the Applicant is still on probation. The record does not establish that the terms and conditions of the court orders imposed on the Applicant were satisfactorily met.

After consideration of the Applicant's arguments and additional evidence submitted on appeal, our de novo review of the record does not demonstrate that the Director failed to consider or otherwise inappropriately weighed the Applicant's evidence in determining that a favorable exercise of discretion was not warranted to adjust her status to that of an LPR under section 245(1) of the Act. While we acknowledge the Applicant's family ties, employment and community ties, letters in support, church membership, the payment of taxes, and her expressions of remorse for the conduct that led to her arrest and conviction, the favorable factors are not sufficient to establish that the Applicant's continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest given the nature, recency, and severity of the actions that lead to her 2020 arrest and conviction, while her T adjustment application was pending, and the Applicant's failure to establish that the terms and conditions of her guilty plea have been met. Consequently, the Applicant has not demonstrated that she merits a favorable exercise of discretion to adjust his status.

ORDER: The appeal is dismissed.