U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34025992

Date: DEC. 03, 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 "T-1" nonimmigrant status. See section 245(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(l). The T-1 classification affords nonimmigrant status to victims of human trafficking and provides a pathway to becoming a Lawful Permanent Resident (LPR).

The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (T adjustment application), finding that the Applicant did not establish he warrants adjustment of status to that of an LPR as a matter of discretion. 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 an applicant 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). Applicants bear the burden of proof of showing discretion should be exercised in their favor. 8 C.F.R. § 245.23(e)(3).

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, and community involvement. Id.; see generally 7 USCIS Policy Manual A.10(B)(2), https://www.uscis.gov/policy-manual (providing, as guidance, adjudicative factors to consider in discretionary adjustment of status determinations). However, where adverse factors are present, the applicant may offset these by submitting supporting documentation establishing mitigating equities that the applicant wants USCIS to consider. 8 C.F.R. § 245.23(e)(3). Depending on the nature of an applicant's adverse factors, the applicant may be required to demonstrate that the denial of adjustment

of status would result in Exceptional and Extremely Unusual Hardship (EEUH). Id.; see generally 7 USCIS Policy Manual, supra, at J.5(C) (providing, as guidance, EEUH considerations in discretionary adjustment of status determinations). Moreover, depending on the gravity of the adverse factors, such a showing might still be insufficient. Id.

II. ANALYSIS

A. Relevant Background and Procedural History

The Applicant, a native and citizen of Honduras, entered the United States in June 2011 at the age of 17 years without inspection, authorization, or parole. In September 2016 the Applicant was granted T-1 nonimmigrant status through September 2020. He filed his T adjustment application in July 2020. In denying the T adjustment application, the Director listed and discussed the evidence submitted in the record below, including a 2014 police report, a psychosocial letter, the Applicant's statements to USCIS, and numerous character reference letters. We hereby incorporate by reference the Director's discussion of the background, evidence, and procedural history of the case and highlight the below as relevant to our analysis on appeal.

The record indicates that in [redacted] 2014 the Applicant was arrested for child molestation and convicted of 3rd degree assault with sexual motivation, a felony. According to the record, the Applicant was sentenced to 15 months confinement, issued a five year no contact order, was given 36 months community custody, and is a registered sex-offender. In his February 2016 statement, the Applicant explained his roommate's 11-year-old brother, who often spent the night at their apartment, came into bed with him while the Applicant was asleep and the Applicant may have accidentally put his hand on the brother's genitals. In a July 2016 statement submitted below, the Applicant, explaining the contents of the 2014 police report, said it was possible that he had watched pornography the evening of the incident, that the roommate's brother turned on his PlayStation and saw images of naked women, and that it was possible that he unintentionally touched the roommate's brother as they slept.

The record also revealed that in [redacted] 2017, after the grant of T-1 nonimmigrant status, the Applicant was charged with a community custody violation. According to the record, the Applicant was ordered to serve five days in a correctional facility. According to the Applicant's September 2023 statement, he admitted during a polygraph test that he had viewed pornography on his cell phone, a violation of the terms of his probation. The Applicant completed a sexual deviancy program after his probation violation and his probation ended in 2020.

In the discretionary analysis, the Director acknowledged the positive factors and mitigating equities present in the Applicant's case: his past victimization and cooperation with law enforcement; his residence, employment, and high school education; his volunteer work which he continued after fulfilling his probation requirements; the character letters attesting to his good moral character, and his fear of being returned to Honduras due to gang violence. The Director also weighed the Applicant's statements of remorse in his 2016 statement, where he explained how sorry he was for the physical and emotional harm he caused his roommate's brother and their family and in his 2016 psychosocial evaluation where the therapist noted the Applicant appeared remorseful that he allowed a minor in his bed and seemed to understand the kind of circumstances that may lead to problematic

situations. The Director also considered that the Applicant was allowed to end probation early due to good behavior; and that he participated in bible study classes while detained and became a bible studies leader and certified teacher.

However, the Director weighed the Applicant's felony conviction of third-degree assault with sexual motivation, which resulted from him victimizing a child; his probation violation that occurred during the time he held T-1 nonimmigrant status; and that he is currently a registered sex offender. The Director concluded that, on balance, the positive or mitigating factors did not outweigh the significant negative factors in his case and consequently, the Applicant had not demonstrated he warrants adjustment to LPR status as a matter of discretion.

On appeal the Applicant submits two briefs, a supplemental statement, additional recommendation letters, and evidence of his current health issues. He asserts USCIS abused its discretion in determining that his conviction and single probation violation outweigh his evidence of rehabilitation, copious positive factors, and the (EEUH)[1] he would face if removed from the United States.

B. The Applicant Does Not Warrant USCIS' Discretion

The Applicant's criminal history poses a significant adverse factor which is not offset by the Applicant's mitigating equities to warrant USCIS discretion. 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); see generally 7 USCIS Policy Manual, supra, at A.10(B)(2) (providing, as guidance, factual circumstances to consider in exercising discretion, including criminal tendencies reflected by a single serious crime, with attention to the nature, seriousness, and recency of criminal violations). Further, only the most compelling positive factors would justify a favorable exercise of discretion in cases where the applicant has committed or been convicted of a crime involving sexual abuse committed upon a child. 8 C.F.R. § 245.23(e)(3).

On appeal, the Applicant asserts that the Director discounted his evidence of rehabilitation. However, most of the evidence he identifies were considered by the Director, such as his expressions of remorse, his psychological exam, and his character letters. The Applicant states he completed a sexual deviancy program, where he drafted letters to the victims as part of his treatment and had no further violations during treatment. He says he no longer drinks alcohol and saw a therapist for a year to learn coping skills, but the Director gave limited weight to this evidence. However, according to the Applicant's sentencing documents, he was required to see a therapist for a sexual deviancy evaluation, follow the treatment recommendations of the evaluator, follow up with sexual deviancy treatment if recommended, give up alcohol, and have no direct or indirect contact with the victims. While we acknowledge the Applicant wrote letters to the victims, the letters could not be sent without violating his probation and were not done of his own volition but as part of his sexual deviant treatment classes, which the Applicant acknowledged were also required as part of his sentencing. We therefore agree

[1] The Applicant asserts that he would suffer EEUH if he is not allowed to remain in the United States. However, the Director did not explicitly assess EEUH, which is a heightened discretionary standard. Regardless, we consider and weigh on appeal the evidence supporting the Applicant's hardship claim, as discussed herein, as a mitigating factor.

with the Director that this evidence of completing a mandatory sexual deviancy program and the other activities he was mandated to perform while under probation should be given limited weight.

We further note that while the Applicant was in T-1 nonimmigrant status, he violated the terms of his probation by watching pornography on his telephone. And, for the majority of his time in T-1 non-immigrant status, the Applicant has been on probation complying with the terms of his sentencing at reduced liberty.

The Applicant also asserts that the Director erred in weighing as an adverse factor that he did not accept responsibility for his actions. Applicants for discretionary relief with a criminal record must ordinarily present evidence of genuine rehabilitation. Matter of Marin, 16 I&N Dec. at 588. Rehabilitation includes the extent to which an applicant has accepted responsibility and expressed remorse for his or her actions. Matter of Mendez-Moralez, 21 I&N Dec. 296, 304-5 (BIA 1996). The Director acknowledged that the Applicant expressed remorse for his actions and weighed this as a positive factor. However, the Director also considered the Applicant's assertions that he never conceded the allegations brought against him and they were never proven in court, even though he was convicted of the felony charge of third-degree assault with sexual motivation, and was sentenced to 15 months imprisonment in addition to other penalties. We cannot look behind his conviction to reassess his guilt or innocence. See Matter of Rodriguez-Carrillo, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine [a non-citizen's] guilt or innocence). We conclude the Director did not err in weighing evidence indicating the Applicant did not accept responsibility for his actions as an adverse factor.

The Applicant also asserts that the Director erred in not weighing his humanitarian concerns in considering whether to exercise favorable discretion. However, the Director weighed the Applicant's victimization and fear of returning to Honduras as positive and mitigating factors. On appeal, the Applicant submits evidence, for the first time, of health issues he has recently developed, claiming in his brief that at age 30 he has been diagnosed with diabetes, high cholesterol, and leukocoria and cataract of both eyes. However, according to the Applicant's statement on appeal, he has undergone cataract surgery, and he did not discuss any additional treatments necessary for his eyes. He says he suffers from post-traumatic stress disorder but is not undergoing treatment because it is too expensive. He also states he takes a drug for his diabetes, which is not available in Honduras. However, he does not explain why his diabetes could not be treated in Honduras with other drugs.

To support adding positive weight to his character letters, the Applicant clarifies that the individuals who provided his character letters knew his criminal history because his probation officer "could" make surprise visits to his home and workplace so he notified the people in his life. He also submitted additional letters of good character by individuals who acknowledge he is trying to overcome his past and describe his compliance with drug tests and that he attended rehabilitation treatments during probation. We acknowledge the letters, including those previously submitted, which cumulatively speak to his willingness to help others, that he has a positive and respectful attitude, is employed, and is a hard worker. However, this new evidence is not sufficient to outweigh the serious nature of his

criminal conviction and his subsequent violation of probation for that conviction while in T-1 nonimmigrant status.[2]

After our de novo review of the record, we conclude the Director properly considered and weighed the Applicant's evidence in determining that a favorable exercise of discretion was not warranted to adjust his status to that of an LPR under section 245(l) of the Act. The Applicant's positive and mitigating factors discussed above, including his character letters, evidence of rehabilitation, past victimization, and the hardship he would face if he returned to Honduras do not outweigh the seriousness of the felony conviction of third-degree assault with sexual motivation resulting from him sexually harming a child and subsequent violation of probation for that conviction while in T-1 nonimmigrant status. Additionally, given the nature of his conviction, only the most compelling positive factors would justify a favorable exercise of discretion. 8 C.F.R. § 245.23(e)(3). Here, as the Applicant has not established that the positive equities, including the hardship he claims, sufficiently outweigh the adverse factors, we conclude that he also has not established sufficiently compelling positive factors to justify a favorable exercise of discretion.

III. CONCLUSION

The Applicant has not established he warrants a favorable exercise of USCIS discretion and has therefore not demonstrated that he is eligible to adjust status to that of an LPR.

ORDER: The appeal is dismissed.

[2] The Applicant also asserts that he has met the other eligibility criteria to adjust to LPR status. However, the Director denied the T adjustment application on discretion and did not discuss the other eligibility criteria required under section 245(l)(1) of the Act and 8 C.F.R. § 245.23(a). We therefore do not reach his arguments regarding whether he met these other eligibility criteria in the first instance.