U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33526736

Date: SEP. 11, 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) based on their "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 Adjust Status of U Nonimmigrant (U adjustment application), concluding that the Applicant had not established that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that a favorable exercise of discretion is warranted. The matter is now before us on appeal. 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 "admitted into the United States . . . under section 101(a)(15)(U) [of the Act]" to that of an LPR provided that they have "been physically present in the United States for a continuous period of at least 3 years since the date of admission as a [U] nonimmigrant" and otherwise establish 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)(1) of the Act.

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").

II. ANALYSIS

The Applicant, a native and citizen of Tanzania, was granted U-1 nonimmigrant status from May 2017 until May 2021. She timely filed her U adjustment application in October 2020. The Director issued a request for evidence (RFE) which asked, in part, for the Applicant to submit criminal records related to numerous arrests. The Applicant responded, in part, with a statement and criminal records related to some of her arrests. The Director listed the documents provided by the Applicant and lengthy details from her statement about her criminal record, both of which we incorporate into our decision. Her statement detailed arrests and convictions from [redacted] 2001 until [redacted] 2018. The Director also mentioned portions of her statement in which she expressed being rehabilitated, being an active member of her community, and starting a mental health agency which resulted in the creation of 90 jobs. The Director could not assess the extent of her rehabilitation as she did not provide sufficiently detailed information about her arrests and convictions, the record did not contain information about compliance with court ordered mandates, and she was on probation for many of her arrests and convictions at the time of another arrest. The Director considered the Applicant's employment, lengthy residence and family ties in the United States, statements in support of her character, and active engagement in her community as favorable factors. The Director noted, however, that apart from the statements from her family members, the third-party statements were given limited weight as the authors did not have knowledge of her criminal history. The Director determined that the Applicant's favorable factors and mitigating equities did not outweigh her unfavorable factors. Therefore, the Director concluded that the Applicant did not submit sufficient evidence to establish that her adjustment of status is warranted on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that she merits a favorable exercise of discretion.

On appeal, the Applicant asserts that the Director failed to consider all her mitigating factors, past harm she experienced in Tanzania and in the United States, hardship she would experience if her application were denied, the impact of removal on her family, and the time since her last criminal offense. Specifically, the Applicant mentions that the Director did not give weight to her ownership of a business, her employment of 90 people, her associate's degree, her filing of taxes, and her home ownership; and erred in giving the non-family member statements limited weight due to lack of knowledge of her criminal history. The Applicant states that she was the victim of female genital mutilation (FGM) while in Tanzania, her prior boyfriend who abused her and her daughter is now in Tanzania and would harm her upon her return there, she was sexually assaulted by a federal prison dentist in 2010, and she is experiencing post-traumatic stress disorder (PTSD). She states that her last arrest was in 2018, the charges for shoplifting were nolle prossed, she was suffering from kleptomania, and she thought therapy.[1] On appeal, the Applicant submits a psychological evaluation, criminal

[1] The Applicant notes that her U.S. citizen spouse filed for divorce from her in [redacted] 2024 and she is no longer asking that he, and any hardship he would experience, be considered as favorable factors.

records, information on kleptomania, statements of support, information on FGM and gender-based violence in Tanzania, medical records and articles, and information on enforcement of immigration law.

The psychological evaluation discusses the Applicant's history of abuse and subsequent PTSD, being a victim of FGM, sexual abuse by an uncle, physical abuse by a prior boyfriend, witnessing her daughter being sexually abused by a prior boyfriend, and sexual abuse by a prison dentist. The psychological evaluation mentions that her ability to act rationally, resulting in commission of crimes, was due to the trauma she experienced. A nurse's statement reflects that she was previously diagnosed with major depressive disorder, anxiety disorder, PTSD, and kleptomaniac disorder; she was compliant with therapy services and medication management from 2018 until 2021; she presented as strong and stable in 2021; and returning to Tanzania would retraumatize her. A cousin of the Applicant states that in 2010 she saw the Applicant's prior boyfriend and another cousin states that she saw him in 2014. They both say he threatened death to the Applicant.

The updated statements from friends and family of the Applicant mention that they are aware of her criminal history and that she is currently a person with good character. Regarding her business, the Applicant's 2022 corporate tax return lists gross receipts of $1,339,624, and $865,208 is listed for 1099 workers. She previously stated that her mental health business serves over 500 children and has taken part in several outreach initiatives in Washington, D.C. Lastly, the record includes a land settlement statement related to home ownership and evidence of college attendance.

Upon de novo review of the record, the evidence and arguments submitted on appeal are not sufficient to overcome the discretionary denial of the Applicant's U adjustment application. The Applicant's favorable factors and mitigating equities include her LPR daughter and U.S. citizen granddaughter, ownership of a business, educational and home ownership pursuits, statements in support of her good character, expression of remorse, psychological and general hardship upon returning to Tanzania, filing personal tax returns from 2017 to 2019, and filing a corporate tax return in 2022. We note that the record does not include tax returns for other years the Applicant worked nor does it include sufficient evidence to establish that her prior boyfriend is currently a threat to her.

The Applicant's favorable factors and mitigating equities do not outweigh her unfavorable factors, which include her September 1999 presentation of a U.K passport with another individual's name while seeking admission to the United States, unlawful employment she admitted to in her U adjustment application from 2004 until 2007, period of unauthorized stay after remaining in the United States after her visitor visa status expired in December 1999, removal order from [redacted] 2012, and serious criminal history. In regard to the Applicant's criminal history, the record reflects that she was charged in [redacted] 2001 with theft, less than $500 value, and the case was nolle prossed; in [redacted] 2002 she pled guilty to grand larceny and received a two year suspended sentence, she was placed on probation, she was found guilty in [redacted] 2003 of violating the conditions of her probation, and she was sentenced to six months in prison in [redacted] 2003; she was arrested in [redacted] 2002 for petit larceny and receiving stolen goods, a bench warrant was issued for both charges, the final disposition was listed as fugitive file, and she states that she was ordered to appear on both charges and did not; she was arrested in [redacted] 2003 for grand larceny and was sentenced to five years in prison, with four years being suspended; she was arrested in [redacted] 2003 and was found guilty for failure to appear; in [redacted] 2003 a warrant was issued as she was a fugitive from justice and the case disposition was

extradition; in [redacted] 2004, she pled guilty to misuse of a passport and was sentenced to two months in prison; in [redacted] 2005, she was arrested for theft, less than $100, and false statement to a peace officer, but the disposition is not clear from the record; in [redacted] 2008, she was arrested for theft, less than $500 value, and firearms-access by minors, but the disposition is not clear from the record; in [redacted] 2008, she was acquitted of 11 charges related to theft and false documents; in [redacted] 2009, she pled guilty to false claim to U.S. citizenship and aggravated identity theft, and she was sentenced to 38 months in prison; in [redacted] 2014, she was charged with theft, less than $100, and false statement to a police officer, and the case was nolle prossed; she was charged with theft, $100 to $1,500, and failure to identify to a police officer in [redacted] 2018 and the cases were nolle prossed in [redacted] 2018; and she was charged with theft, $100 to $1,500 in [redacted] 2018 and the case was nolle prossed in [redacted] 2019.

In considering an applicant's criminal history in the exercise of discretion, we look to the "nature, recency, and seriousness" of the relevant offenses. *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978). Furthermore, we may consider an arrest record in an exercise of discretion, depending on the evidence in the record. *See Matter of Teixeira*, 21 I&N Dec. 316, 321 (BIA 1996) (citing to *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). The Applicant's criminal history spans about 18 years and includes a long list of arrests, failing to appear for court dates, convictions, and periods of confinement. Additionally, she was arrested multiple times while in U nonimmigrant status. Although she was not convicted of those crimes, we are permitted to consider her arrest records in a discretionary analysis. She indicated that she engaged in theft by stating that she was suffering from a bout of kleptomania in 2018 and she sought professional help in response to these incidents. Finally, the Applicant has not provided sufficient evidence to establish that she has been rehabilitated. 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").

Under these circumstances, the Applicant has not demonstrated that her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest such that she warrants a positive exercise of our discretion to adjust his status to that of an LPR under section 245(m) of the Act.

ORDER: The appeal is dismissed.