

NATIONAL IMMIGRANT JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

July 14, 2016

VIA FEDEX

U.S. Citizenship & Immigration Services
Vermont Service Center
ATTN: U Visa Adjustment of Status
75 Lower Welden St.
St. Albans, VT 05479-0001

**RE: REQUEST FOR EVIDENCE
I-485, APPLICATION TO ADJUST STATUS
EAC1612312345**

XXXX XXXX A# 012-345-678

Dear Immigration Officer:

The National Immigrant Justice Center represents Mr. XXXX XXXX in his I-485, Application to Adjust Status, under INA 245(m). On April 21, 2016, Vermont Service Center (VSC) requested more evidence regarding Mr. XXXX' application, specifically further evidence about his criminal history and positive discretionary evidence.

RECORD OF CONVICTION

The U.S. Supreme Court has defined the "record of conviction" to include the charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented." *Shepard v. U.S.*, 544 U.S. 13, 16 (2005). However, the record of conviction does not include arrest reports. *Id.* The record of conviction, including the indictment or information, can be considered to determine whether a conviction affects a person's immigration status. *Vue v. INS*, 92 F.3d 696, 700 (8th Cir. 1996).

Because arrest reports do not constitute the record of conviction, Mr. XXXX has not included those in his response to this request for evidence. Mr. XXXX has included the information, indictment, disposition, and sentencing order for the crimes of which he was convicted. However, because Mr. XXXX was not convicted of the crime of disorderly conduct, the complaint or charging documents for that crime do not comprise the record of conviction since there was in fact no conviction.

POSITIVE DISCRETIONARY EVIDENCE:

An applicant for adjustment of status under INA §245(m) must prove that he merits a favorable act of discretion. 8 CFR §245.24(d)(11). The applicant must also overcome any adverse factors with mitigating equities. *Id.* Depending on the nature of the adverse factors, an applicant may be required to show that the denial of adjustment of status would result in

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exceptional and extremely unusual hardship. *Id.* USCIS should approve Mr. XXXX' application for adjustment of status because of his positive discretionary factors and because Mr. XXXX and his mother, MOTHER, would suffer exceptional and extremely unusual hardship if USCIS denies Mr. XXXX' application.

A. XXXX XXXX was convicted of unlawful use of a weapon and aggravated unlawful use of a weapon

On November 10, 2012, Mr. XXXX was arrested, and on December 11, 2014 he was convicted of two counts of aggravated unlawful use of a weapon. Specifically, Mr. XXXX was convicted under 720 ILCS 24-1.6(a)(1)/(3)(C), for carrying a firearm without a valid FOID card and under 720 ILCS 24-1.6(a)(2)/(3)(C), for carrying a firearm on a public street without a valid FOID card. Mr. XXXX was sentenced to conditional discharge and two years of probation, which he will complete in January 2017.

Mr. XXXX was not charged with or convicted of any intent to use the firearm, but rather, possession of an unregistered firearm. Mr. XXXX stated in his first affidavit that he did not have the firearm on him at the time of his arrest but that the officer found the firearm near him and then arrested Mr. XXXX.

Mr. XXXX' conviction does not constitute a serious violent crime under the regulations found at 8 CFR §245.24 because the charges and conviction do not indicate any intent to use the firearm. During the pendency of the trial, Mr. XXXX was not incarcerated but was granted house arrest. After being convicted, the judge sentenced Mr. XXXX to probation and conditional discharge, which further indicates that he did not commit any violent act. Per 730 ILCS 5/5-6-1(a), the Illinois criminal courts shall sentence defendants to conditional discharge *unless* the person's imprisonment is necessary for the protection of the public. (emphasis added).

USCIS should approve Mr. XXXX application for adjustment of status because he did not commit a serious violent crime.

B. Mr. XXXX and Ms. MOTHER would suffer exceptional and extremely unusual hardship if USCIS denies Mr. XXXX' application for adjustment of status

When adverse factors are present, an applicant for adjustment of status may be required to show that denial of the application would result in exceptional and extremely unusual hardship. 8 CFR §245.24(d)(11). However, the regulations do not state who must suffer the hardship and therefore it implies that it may be the applicant or a family member. *Id.*

Exceptional and extremely unusual hardship is the standard for other areas of immigration law, including cancellation of removal and waivers found at INA §212(h), and therefore, it is a

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well-established standard. The Board of Immigration Appeals (BIA) has held that exceptional and extremely unusual hardship need not be unconscionable. *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001). The hardship also need not be so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, would qualify for relief. *Matter of Recinas*, 23 I&N Dec. 467, 470 (BIA 2001).

*To illustrate this non-restrictive standard, in *Recinas*, the BIA made a finding of exceptional and extremely unusual hardship for a single mother with six children where 1) the USC children did not know any other way of life than in the U.S. and did not read or write in the language of the country of deportation, 2) the USC children entirely depended upon respondent for financial and emotional support because the parents divorced and the father was not involved, 3) respondent's ability to care for the children if deported would have been substantially hampered because her LPR mother was assisting her in the U.S. and she had no family in the country of deportation, 4) the respondent had a strong family system in the U.S. that has provided financial and emotional support without which respondent's hardship would increase and would affect hardship to the USC children, and 5) respondent's prospects of immigrating are unrealistic due to the backlog of visa availability. *Id.* at 469-472.

Generally, in finding exceptional and extremely unusual hardship, immigration considers the following factors: family separation, economic hardship, psychiatric and medical concerns, community ties and acculturation, country conditions in the country of removal, and the possibility of legalizing status through another means. *Matter of Monreal*, 23 I&N Dec. 56, 63 (BIA 2001).

If XXXX XXXX' application for adjustment of status were denied, he and his mother, MOTHER, would suffer exceptional and extremely unusual hardship because of 1) family separation, 2) economic hardship to Mr. XXXX and Ms. MOTHER, 3) psychiatric and medical concerns within the family, 4) Mr. XXXX' community ties and acculturation, 5) country conditions in HOME COUNTRY, and 6) Mr. XXXX' possibility of legalizing his status through another means.

1. Family Separation

Mr. XXXX and Ms. MOTHER would suffer exceptional and extremely unusual hardship if USCIS denies Mr. XXXX' application for adjustment of status because of family separation. Mr. XXXX needs a grant of adjustment of status so he and his mother, MOTHER, can stay together. Ms. MOTHER's life has been marked by loss. Ms. MOTHER has lost her father, who never wanted a relationship with her, and her mother and brother, who both passed away. Ms. MOTHER lost her childhood to sexual abuse when her grandfather molested her, and she lost the hope of a happy marriage to domestic violence and a subsequent divorce. Ms. MOTHER lost her home in STATE when the federal government helped her relocate to Chicago for safety concerns after she testified against her husband, EX-SPOUSE. Ms. MOTHER lost her relationship with

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YYYY, the father of her two youngest children to more domestic violence. Ms. MOTHER then lost her boyfriend, QQQQ, when he was shot and murdered right in front of her. Ms. MOTHER has suffered significant and repeated losses throughout the course of her life. Ms. MOTHER speaks in her affidavit of the importance of her family, which is the one thing that makes her happy, and how she could not bear losing her son, XXXX, if he had to go back to HOME COUNTRY.

Ms. MOTHER worries that if her son, XXXX, is not allowed to stay in the U.S. that she will not be able to see him again. Ms. MOTHER worries that XXXX will be hurt or killed if he goes back to HOME COUNTRY because of Ms. MOTHER's helpfulness in the prosecution of her violent ex-husband, EX-SPOUSE, who has strong gang ties, and the investigation of her boyfriend's murderer, ZZZZ. Both Mr. ZZZZ and Mr. EX-SPOUSE have ties to HOME COUNTRY. Ms. MOTHER also fears returning to HOME COUNTRY because she could be hurt or killed for her helpfulness in the investigations of ZZZZ and EX-SPOUSE. Ms. MOTHER's financial situation and her psychiatric conditions would also make it difficult for her to visit her son, XXXX XXXX, if he were in HOME COUNTRY. Ms. MOTHER's mental health conditions have left her with a fear of public places and an inability to work, which would make it impossible for her to travel, both physically and economically.

Mr. XXXX would also suffer exceptional and extremely unusual hardship if he were not allowed to stay in the U.S. and separated from his family. Mr. XXXX also speaks in his affidavit of the losses he has endured in his life. His numerous moves resulted in the loss of friendships, the loss of his grandmother, and the loss of many homes and communities. Throughout it all, his mother and his siblings have been his one constant. Now, after years of upheaval, Mr. XXXX has established a family with his daughter, his siblings, and his mother. Mr. XXXX would suffer greatly if he could not stay in the U.S. with his family, especially when he has no close family in HOME COUNTRY. Mr. XXXX also worries that he will not be able to continue to have a relationship with her

USCIS should grant Mr. XXXX' application for adjustment of status because he and Ms. MOTHER would suffer exceptional and extremely unusual hardship if their family were separated.

2. Economic Hardship

Mr. XXXX and Ms. MOTHER would suffer exceptional and extremely unusual hardship if USCIS denies Mr. XXXX' application for adjustment of status because of economic hardship.

Ms. MOTHER cannot work because of her mental health conditions, and yet, she also supports her three youngest children, BROTHER, SISTER, and SISTER. Ms. MOTHER depends on her Mr. XXXX' support because he pays Ms. MOTHER's monthly rent, and he also helps her with bills and food. Mr. XXXX' daughter, DAUGHTER, would also suffer hardship

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because Mr. XXXX supports her by buying her clothes, shoes, and toys, as well as giving cash to his child's mother. Mr. XXXX provides regular support to his child's mother, and as a result, she has never had to go to court to force child support from Mr. XXXX.

Mr. XXXX would also suffer economic hardship if he were sent back to HOME COUNTRY because he has been living in the U.S. since he was around age eleven. Mr. XXXX does not know how to find work in HOME COUNTRY. Furthermore, the pay rates in HOME COUNTRY are very low, which would make it difficult for him to support himself, his mother or his child with his meager paycheck. The poverty rate in HOME COUNTRY is very high, and Mr. XXXX could be subjected to poverty if he had to return to HOME COUNTRY, especially because his mother would not be able to support her son financially since she does not work.

USCIS should grant Mr. XXXX's application for adjustment of status because he and Ms. MOTHER would suffer exceptional and extremely unusual hardship economically if Mr. XXXX's application were denied.

3. Psychiatric and Medical Concerns

Ms. MOTHER would suffer exceptional and extremely unusual hardship if USCIS denies Mr. XXXX's application for adjustment of status because of the psychiatric and medical issues within the family.

Ms. MOTHER has post-traumatic stress disorder (PTSD) and major depressive disorder for which she takes medication and sees a psychiatrist. While major depressive disorder is treatable, episodes can be triggered. Triggers include the loss of a loved one. If Ms. MOTHER's son could not stay in the U.S., Ms. MOTHER's depression symptoms could worsen, which would make it difficult for her to care for her three younger children.

Ms. MOTHER would also suffer exceptional and unusual hardship because of her children's psychiatric conditions. Ms. MOTHER's youngest children, SISTER and SISTER, have special needs, which include PTSD, developmental delays, ADHD, and learning disabilities. Ms. MOTHER meets with her children's school teachers to plan their individualized educational plans, and she also takes her children to regular check-ups with the psychiatrists. Because of their special needs and Ms. MOTHER's own mental health issues and physical limitations, Ms. MOTHER requires extensive help. Ms. MOTHER depends on her son, XXXX, to help babysit her children, and she depends on her other children to help her go to appointments since Ms. MOTHER greatly fears going out into public alone. Ms. MOTHER also depends on her son, XXXX, to help her clean, cook, do yard work, and bathe her children. Because Ms. MOTHER also suffers from back pain and an enlarged uterus, she needs XXXX's help to do physical tasks around the house. Ms. MOTHER has been approved for homecare through Medicaid, but she greatly fears inviting strangers into the house due to her mental health conditions and the abuse she has suffered throughout her life.

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Ms. MOTHER also sometimes needs to take a break and be alone when she starts to feel stressed. During those times, she needs to go to her room to be by herself. Because her children cannot be left alone due to their own special needs, Ms. MOTHER depends on XXXX to help her when she needs a break.

Because the needs of Ms. MOTHER and her two youngest children are so intensive, she needs a large support system to help care for her mental, physical, financial, and emotional needs. Ms. MOTHER writes that XXXX is the best help that she has ever had. She also relies on XXXX to be a positive male role model for her three youngest children because they do not have fathers in their lives. Unlike the children's fathers, who were violent and abusive, XXXX is calm and helpful with his siblings.

USCIS should grant Mr. XXXX' application for adjustment of status because he and Ms. MOTHER would suffer exceptional and extremely unusual hardship if his application were denied due to the psychiatric and medical concerns within the family.

4. Community Ties and Acculturation

Mr. XXXX would suffer exceptional and extremely unusual hardship if USCIS denies Mr. XXXX' application for adjustment of status because of his community ties and acculturation.

Mr. XXXX is currently 25 years old, and he has lived in the U.S. since he was about eleven years old. Mr. XXXX has now lived more years in the U.S. than he has in HOME COUNTRY. Mr. XXXX would suffer exceptional and extremely unusual hardship if he had to go back to HOME COUNTRY because he grew up in the U.S., and he does not know HOME COUNTRY. It would be difficult for him to work and live there without strong family support.

USCIS should grant Mr. XXXX' application for adjustment of status because he and Ms. MOTHER would suffer exceptional and extremely unusual hardship if his application were denied due to his community ties and acculturation.

5. Country Conditions within HOME COUNTRY

Mr. XXXX would be at risk of poverty and physical harm if he returned to HOME COUNTRY. The poverty rate in HOME COUNTRY is at about 42%, according to the World Bank, and the hourly minimum wage is less than \$2 per hour. Because of the economic conditions in HOME COUNTRY, Mr. XXXX would be subjected to a high risk of poverty if he went back.

Mr. XXXX would also be at risk of physical harm if he returned to HOME COUNTRY because of his mother's cooperation in the criminal prosecutions of her ex-husband, EX-

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SPOUSE, and ZZZZ, who murdered her boyfriend. Because of the corruption of the police officers in HOME COUNTRY, Mr. XXXX would not be protected if he had to return.

USCIS should grant Mr. XXXX' application for adjustment of status because he would suffer exceptional and extremely unusual hardship if his application were denied due the country conditions in HOME COUNTRY.

6. Mr. XXXX Possibility of Legalizing his Status through Another Means

If Mr. XXXX could not stay in the U.S., it would be difficult for him to legalize his status through another means. If his mother's pending adjustment application is approved, she will become a lawful permanent resident, and she will then be able to petition for her son, Mr. XXXX. However, Mr. XXXX will have to first leave the U.S. and go to an interview for an immigrant visa at the Consulate in HOME COUNTRY and wait for the Consulate to request a waiver for unlawful presence. Only after the Consulate requests the waiver will Mr. XXXX be allowed to submit his application to waive the unlawful presence and then he will have to wait outside the U.S. while USCIS adjudicates his waiver. Mr. XXXX could be outside the U.S. for over a year waiting for his immigrant visa.

Mr. XXXX' life would be at great risk if he had to stay in HOME COUNTRY for a large amount of time because the family of ZZZZ and EX-SPOUSE could seek their revenge on him. During the time that Mr. XXXX is outside the U.S., his mother will be under great stress due to the separation from her son and not knowing if his waiver will be approved. The stress and separation could exacerbate Ms. MOTHER's major depressive disorder. Because Mr. XXXX would have to face great risk in legalizing his status through his mother, it would be nearly impossible for him to legalize his status through another means.

USCIS should grant Mr. XXXX' application for adjustment of status because he and Ms. MOTHER would suffer exceptional and extremely unusual hardship if his case were denied since it would be difficult for Mr. XXXX to legalize his status through his mother.

C. Mr. XXXX merits a favorable act of discretion

An applicant for adjustment of status must prove that he merits a favorable act of discretion based on humanitarian grounds, family unity, or the public interest. USCIS should approve Mr. XXXX' case because he merits a favorable act of discretion.

As explained in the above section, Mr. XXXX and his mother, MOTHER, have humanitarian grounds that warrant the approval of his case, including the psychiatric conditions of Ms. MOTHER and her children and the threat of violence in HOME COUNTRY. If USCIS grants Mr. XXXX' lawful permanent resident status, he would become subject to the deportability grounds found at INA §237, and he could still be deported from the U.S. if he does not follow

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the laws of the United States. Granting Mr. XXXX' application for adjustment of status would simply provide Mr. XXXX a second chance, a second chance that he and his family desperately need.

USCIS should grant Mr. XXXX' application for adjustment of status because he merits a favorable act of discretion based on humanitarian grounds, family unity, and the public interest.

Thank you for your attention to this matter. Please feel free to contact me should you need anything further in adjudicating Mr. XXXX' application

Sincerely,

Jennifer Scarborough
BIA Accredited Representative
312-660-1696
jscarborough@heartlandalliance.org