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U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
ADMINISTRATIVE APPEALS OFFICE
WASHINGTON, D.C.

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In the Matter of:)	
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XXXXXXXXXXXXXXXXXXXX (A xxx xxx 474))	I-290B receipt no:
)	Underlying receipt no.:
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BRIEF IN SUPPORT OF APPEAL

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COMES NOW APPELLANT, XXXXXXXXXXXXX, through undersigned counsel (herein “Appellant”), and submits this brief in support of his appeal. Appellant asks the AAO to withdraw the Vermont Service Center’s decision denying his application to adjust status, which application Appellant submitted under INA § 245(m) as a U-3 with at least three years of continuous physical presence in the United States.

Introduction

The Vermont Service Center (the “VSC”) is punishing Appellant, a 25-year-old Mexican national, for a handful of arrests which took place before he turned 18, none of which led to convictions or admissions of guilt. And, perhaps more troublingly, based on inadmissible hearsay in an 2009 police report—“Their T-shirts were displaying the words ‘WESTE LOCOTE[,]’ [*sic.*] which is known as a street gang operating in the area”—the VSC determined that Appellant belongs to a gang, something he vehemently denies. From nothing more than this—arrests when he was a juvenile and hearsay in an uncorroborated police report—the VSC found that Appellant has a “serious pattern of criminality and gang involvement.”

This is not only a mischaracterization of Appellant’s record, but also tragically unfair. While he makes no excuses for his conduct and has expressed sincere remorse, Appellant’s underage run-ins with the law are understandable when considered that, still reeling from life with his violently unhinged father, he was seeking approval in the only place he could find it—from a group of ne’re-do-well neighborhood kids who, predictably enough (in hindsight), proved to be a bad influence. Appellant has long since sworn off his old “friends”—he is in a long-term, committed relationship with the mother of his children (a Lawful Permanent Resident), he has two U.S. citizen daughters, and, through his employer of four-plus years, he is his family’s sole breadwinner. Further, his mother (also an LPR) brought him to the United States when he was one-year-old; this country is the only home Appellant knows, and in Mexico there is no one willing to take him in.

Background / Procedural History

Appellant was 19-years-old when he received the U visa, in September of 2011. He is a U-3—his mother, the U principal, received the U visa in connection with horrific, years-long abuse both she and Appellant suffered at the hands of her ex-husband, i.e., Appellant’s father. On June 30, 2015, Appellant filed with USCIS a Form I-485 based on at least three years of continuous physical presence in U status.

On May 31, 2016, the VSC issued a request for additional evidence (the “RFE”). The RFE requested original or certified copies of documents (e.g., “charging document,” “certified court disposition”) related to the following arrests:

- A March 5, 2009 arrest pursuant to which Appellant was charged in the Fulton County (Georgia) Superior Court with “Furnishing, Purchasing, and Possession of Alcoholic Beverages by Persons Below Legal Age.” The “court case number” is listed as “09-CR-355043.” Related to this arrest, the RFE also states: “Additionally, the officer noted you were wearing a t-shirt WESTE LOCOTE [*sic.*], which is a known street gang operating in the area of your arrest.” RFE at 2.

- A June 10, 2009 arrest in which Appellant was charged with “simple assault” and “criminal street gang activity.” Id.

The RFE also noted that, in his Form I-485, Appellant stated that he had been arrested for “smoking marijuana” in 2004, “fighting” in 2007, and “disorderly conduct” in 2009.¹ Id. at 3.

Appellant timely responded to the RFE. With his response, Appellant submitted the following materials:

- Certified copy of a December 16, 2009 order placing case number 09-SC-82457 (“simple assault” and “participation in criminal street gang activity”) on the Court’s “dead docket.”²
- Certified copy of a July 7, 2011 order placing case number 09-CR-355043 (the charges relating to furnishing alcohol to a minor) on the Court’s dead docket.
- Certified copy of a May 6, 2010 “Order of Dismissal” with respect to the 2009 charges for “disorderly conduct,” which dismissal notes that Appellant paid restitution and completed a pretrial diversion program.
- A letter dated October 12, 2010 from the Deputy Clerk of the Juvenile Court of Fulton County (Georgia) stating that Appellant “**does not** have a prior record with this court.” (Emphasis in original.)
- Appellant’s written statement in which he notes, among other things: his steady employment with the same company; his (at the time) five-year-old U.S. citizen daughter and the impending birth of his second daughter (now ten-months-old); his regret at having made mistakes in his past; and his desire to be the role model for his daughters that his father never was for him.
- U.S. birth certificate for Appellant’s (at the time) five-year-old daughter.
- Six glowing letters of support from friends and family, including Appellant’s LPR long-term girlfriend (and mother of his children) and his LPR mother.

¹ As mentioned in the “Introduction,” *supra*, **all** Appellant’s arrests took place before he reached the age of 18, and **none** resulted in a conviction or admission of guilt.

² “[D]ead docketing is a procedural device by which the prosecution is postponed indefinitely but may be reinstated any time at the pleasure of the court. Placing a case upon the dead docket certainly constitutes neither a dismissal nor a termination of the prosecution in the accused’s favor. A case is still pending which can be called for trial at the judge’s pleasure.” *Goddard v. State*, 315 Ga.App. 868, 869 n.1 (2012) citing *Barrett v. Sanders*, 262 Ga.App. 63, 66 (2003).

Appellant also submitted various pictures of himself together with his oldest daughter and her mother (Appellant’s long-term girlfriend) in and around Atlanta.

On April 19, 2017, the VSC denied Appellant’s Form I-485 (the “Decision”). The VSC found that Appellant’s arrests—all of which, as noted in the “Introduction” and in footnote 1, *supra*, took place when Appellant was a *minor*, and *none* of which resulted in a conviction—evidenced a “serious pattern of criminality and gang involvement.” Decision at 4. After acknowledging the materials submitted in response to the RFE, the VSC states in relevant part:

Your affidavit only states that you made some mistakes while you were younger and regret your actions. You did not provide a self-affidavit describing the facts of the charges against you. Therefore, based off the charges and convictions from the court documents you provided, USCIS determines the risk you pose to the public and the severity of your crimes as negative factors and are weighed heavily against you... USCIS notes you have a pattern of criminality. Since these crimes are serious, dangerous, and frequent, it is not in the public’s interest to adjust your status at this time. *Your criminality is further exacerbated by the above indications in the record that you are associated with the WESTE LOCOTE street gang. USCIS must also note that you did not disclose your gang affiliation to USCIS.* The pattern of criminality suggests a disregard for U.S. law. Additionally, you did not mention any hardship to you or your family if relief is not granted or proof of rehabilitation.

(Emphasis supplied.) Id. The VSC ultimately concluded that the “mitigating factors” in Appellant’s case—including his “long duration in this country from a young age”—“do not outweigh the negative equities found in the record.” Id.

As shown below, the VSC abused its discretion in denying Appellant’s Form I-485, and this appeal should accordingly be sustained.³

I. The VSC committed an error of fact in finding that Appellant “did not mention any hardship to [him] or [his] family if relief is not granted or proof of rehabilitation.”

Hardship that would result to Appellant and his family is apparent from the previously-

³ Appellant notes that the AAO has on at least two previous occasions reversed the VSC’s discretion-based denial of a U adjustment application. See, e.g., *Matter of J-E-R-G-*, ID# 16469 (AAO May 23, 2016), and *Matter of C-M-Q-*, ID# 103975 (AAO Sept. 23, 2016).

submitted personal statements and letters of support, which speak to the central role Appellant plays in his family's health and well-being. The many glowing letters of support also provide enormous "proof of rehabilitation"—the authors' affirmation of Appellant's selflessness and strong character are nothing if not evidence that he has been "rehabilitated." Consider also Appellant's own personal statement (submitted in response to the RFE):

When I was younger I made some mistakes that I regret[,] and I'm not excusing them by any means but I'm older now and have a different mindset. I have matured and am very family-oriented and want to do something [with] myself in this life...

Further, xxxxxxxxxxxxxx—Appellant's LPR girlfriend of eight years and the mother of his children—notes in her own personal statement that, "Since the day [Appellant] found out he was going to be a father five years ago[,] he has become the most responsible, trustworthy, caring, and hardworking man."

It thus appearing that prior to issuing its decision the VSC failed to take into account significant hardship and rehabilitation evidence, the AAO should sustain this appeal or, alternatively, remand to the VSC with instructions to consider the entire record.⁴

II. The VSC committed an error of fact in finding that Appellant failed to submit evidence regarding the disposition of his 2009 arrest for "Participation in Criminal Street Gang Activity" and "Simple Assault."

On page four of the Decision, the VSC states as follows:

Your record also indicates on March 24, 2009, you were charged with one count of Participation in Criminal Street Gang Activity [under] O.C.G.A. [Section] 16-5-4 and one count [of] Simple Assault [under] O.C.G.A. [Section] 16-5-20. *The charging disposition you provided does not list any disposition for the above charges.*

(Emphasis supplied.) This is incorrect—in response to the RFE, Appellant submitted a copy of the indictment, on the bottom left-hand corner of which appears the following text:

⁴ Note that significant, additional hardship and rehabilitation evidence is provided via the supplemental sworn statements of Appellant (Tab A), Appellant's long-term girlfriend (and the mother of his children) (Tab B), and Appellant's mother (Tab C).

Upon motion of Asst. Dist. Atty. Eleanor Ross[,] the within indictment is ordered placed upon the dead docket and the surety is relieved of liability in the case. This the 16th day of Dec[ember] 2009. [illegible signature], Judge, S.C., A.J.C.

To the right of this text is the file stamp of the “Deputy Clerk,” reflecting that the judge’s dead-docketing order was filed with the Fulton County (Georgia) Superior Court on December 16, 2009.

The dead-docketing order functions as the “disposition” in this case. Although it does not formally “dispose” of the case, it is the last action taken by the court with respect to the referenced charges. Further, the case has now been on the court’s dead docket for almost eight years—all witnesses and evidence being irredeemably stale, the December 16, 2009 order is as close to a final disposition as one could imagine, short of a formal dismissal (which is forthcoming, as discussed in section “III,” *infra*). The VSC thus committed an error of fact in finding that there is no disposition for the charges in the referenced case.

III. The “Criminal Participation in Street Gang Activity” and “Simple Assault” charges are a case of mistaken identity—the victim has admitted that he wrongly identified Appellant as the aggressor and, for this reason, the District Attorney is moving for an entry of *nolle prosequi*.

The victim, Mr. Gilberto Torres Jr., has provided a sworn statement in which he states in relevant part:

I confirm that [Appellant] was not involved in [the] incident in question which occurred in March of 2009, and resulted in [Appellant] being charged with ‘Participation in Criminal Street Gang Activity’ and ‘Simple Assault’ in Fulton County [Georgia] Superior Court (Case no. 09-SC-82457).

Tab E (herein the “Torres Statement”). The undersigned has provided the Torres Statement to Ms. Adriane Love, Assistant District Attorney at the Office of the Fulton County District Attorney. Tab D (sworn statement of undersigned counsel). On June 26, 2017, Ms. Love copied the undersigned on an e-mail to another Assistant District Attorney, Mr. Charles Bailey, in which

she instructed Mr. Bailey to “prepare a motion for nolle pros” in the referenced case. Id. at 31. Appellant thus understands that the order for entry of *nolle prosequi* is forthcoming, and will submit same to the AAO as soon as it is received. Nonetheless, even assuming the order of *nolle prosequi* is never entered, Appellant submits that the Torres Statement requires withdrawal of the VSC’s decision.

IV. The VSC abused its discretion in relying on hearsay in an uncorroborated police report to find that Appellant is or has been affiliated with a gang—something Appellant vehemently denies.

The officer’s statement—“Their T-shirts were displaying the words ‘WESTE LOCOTE[,]’ [*sic.*] which is known as a street gang operating in the area”—is found in a police report wherein the “crime” is listed as “minor in possession of alcohol.” To begin, the officer presumably would have listed a gang membership-related crime (e.g., “participation in criminal street gang activity”) had he felt that the T-shirts evidenced gang membership. The fact that he did not belies the wrongheadedness of the VSC’s reliance on the officer’s statement to find that Appellant was a gang member. Indeed, Appellant was not caught spray painting gang graffiti or committing a violent act against a rival gang—he was simply wearing a T-shirt. Appellant explains:

I was never a member of the “Weste Locote” gang, or any other gang. It’s true, I was wearing that shirt at the time I was arrested, but it wasn’t mine—it was a friend’s, and I had just borrowed it to wear something. (It was an air-brushed shirt—those cost money that I didn’t have.) Also, I was NOT wearing a belt buckle with #13 [*sic.*] on it and I was not wearing a blue-and-white bandana.

(Emphasis in original.) Tab A at 18.⁵ In sum, the reporting officer does not cite Appellant for gang-related crimes or even opine that Appellant is a member of a gang; Appellant, for his part, expressly denies gang membership and explains that he had borrowed the T-shirt in question just

⁵ Note that, in his supplemental declaration at Tab A, Appellant provides details on the events leading to all his arrests.

“to wear something.” And, on this “evidence,” the VSC determines that Appellant is a gang member—this was an abuse of discretion.

Further, even assuming the officer *had* caught Appellant “tagging” (spray painting gang-related symbols or messages) or retaliating against a rival gang, the Eleventh Circuit has held that uncorroborated arrest reports are of little evidentiary value in immigration proceedings. See generally *Garces v. U.S. Atty. Gen.*, 611 F.3d 1337 (11th Cir. 2010). In *Garces*, the petitioner, a Cuban national, was arrested in a drug bust and pleaded guilty to drug trafficking. The Florida state court later vacated the conviction based on Garces’s lawyer’s failure to advise him of the potential immigration consequences of his guilty plea. However, although the conviction was now a nullity, USCIS nonetheless denied Garces’s application to adjust status under the Cuban Adjustment Act, finding that he was inadmissible under INA § 212(a)(2)(C)—that is, there was “reason to believe” that Garces “is or has been an illicit trafficker in any controlled substance.” The Department of Homeland Security initiated removal proceedings, during which Garces insisted that he had never trafficked drugs and that he was in no way involved in the drug transaction which led to his arrest. The Immigration Judge, however, relied on hearsay statements in uncorroborated “arrest reports” to find that there was indeed “reason to believe” that Garces was involved in drug trafficking, thus sustaining the charges of inadmissibility under INA § 212(a)(2)(C). The Board of Immigration Appeals (the “Board”) affirmed on appeal, and Garces petitioned for review with the Eleventh Circuit.

The Eleventh Circuit reversed, holding that, “[a]bsent corroboration, the arrest reports by themselves do not offer reasonable, substantial, and probative evidence that there is reason to believe Garces engaged in drug trafficking.”⁶ *Garces*, 611 F.3d at 1350. In reaching its decision,

⁶ The Court adopted the “reasonable, substantial, and probative evidence” standard from the Board’s decision in *Matter of Rico*, 16 I&N Dec. 181, 185 (BIA 1977)(affirming IJ’s

the Court first noted that “[b]oth federal and Florida courts would exclude [the arrest reports] as hearsay in a criminal case...” Id. at 1349. Then, citing “reliability concerns” regarding arrest reports in general, the Court quoted the following language from *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995), in which the Board declined to find that an “apprehension report” should be considered as a negative factor for discretion under INA § 212(c):

[W]e are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein. Here, the applicant conceded that the arrest took place but admitted to no wrongdoing. Considering that prosecution was declined and that there is no corroboration, from the applicant or otherwise, we give the apprehension report little weight.

(Emphasis supplied.) Id. Notwithstanding these general reliability issues, the arrest reports in *Garces* also included conclusory statements: “The arrest reports state the police officers’ conclusions (saying Garces ‘was involved in a cocaine deal’) rather than recording their observations of facts sufficient to show guilt.” Id. The Eleventh Circuit reversed the Board’s decision, holding that the arrest reports—uncorroborated, inadmissible, and conclusory—did not establish there was “reason to believe” that Garces was involved in drug trafficking. Id. at 1350.

The police report in this case is every bit as infirm and unreliable as the “arrest reports” at issue in *Garces*. It is uncorroborated: Appellant flatly denies that he has ever been in or affiliated with a gang, and the “crime” cited in the report has—more than eight years later—still not been prosecuted, much less proven.⁷ The report would also be inadmissible as hearsay in criminal proceedings in Georgia. See O.C.G.A. § 24-8-803(8)(B)(police reports not admissible under public records hearsay exception). And the excerpt used to establish Appellant’s “gang membership”—“Their T-shirts were displaying the words ‘WESTE LOCOTE’ [*sic.*] which is known as a street gang operating in the area”—is wildly conclusory. For instance, to whom is it

determination that there was “reason to believe” respondent was a drug trafficker and therefore excludable).

⁷ As mentioned, *supra*, the case is languishing on the court’s “dead docket.”

“known” that “WESTE LOCOTE” is a gang that operates in the area where Appellant was arrested? Indeed, to whom is it “known” that it is a gang at all? Does the arresting officer have personal knowledge enabling him to make such a statement? There is no way to know—the arresting officer is not available for cross-examination. See generally *Shepard v. U.S.*, 544 U.S. 13 (2005)(discussing the unreliability of police reports for purposes of determining the offense for which a defendant was convicted).

The lesson of *Garces*—that an uncorroborated police report is entitled to minimal weight—applies even though the instant facts do not involve a “reason to believe” determination under INA § 212(a)(2)(C). Here, the relevant regulation is 8 C.F.R. § 245.24(d)(11)(“Evidence relating to discretion”), which provides that, in considering whether to exercise discretion in favor of a U adjustment applicant, USCIS takes “all factors” into account, “including acts that would otherwise render the applicant inadmissible.” The regulation also states:

[D]epending on the gravity of the adverse factors, such a showing [of hardship] might still be insufficient. For example, USCIS will generally not exercise its discretion favorably in cases where the applicant has *committed* or been convicted of a serious violent crime, a crime involving sexual abuse *committed* upon a child, or multiple drug-related crimes, or where there are security- or terrorism-related concerns.

(Emphasis supplied.) 8 C.F.R. § 245.24(d)(11). Unfortunately, neither the INA nor its implementing regulations provide any guidance as to how exactly USCIS’s discretion is calibrated in the context of a U adjustment.

Appellant submits that USCIS abuses its discretion where it denies a U-based adjustment in the absence of “reasonable, substantial, and probative evidence” that the applicant committed the acts USCIS considers to constitute “adverse factors.” This standard—the one used to determine inadmissibility under INA § 212(a)(2)(C)—is equally applicable in the U adjustment context, wherein a refusal to exercise discretion leads to the same result as a finding of

inadmissibility: prohibition on adjustment and possible deportation. The stakes, in other words, are as high in this context as they were in *Garces*. It follows that the evidentiary standards should be the same.⁸

Finally, even assuming that the “reasonable, substantial, and probative evidence” standard is not applicable, it simply cannot be the case that USCIS can refuse to exercise discretion under these facts. Indeed, Appellant submits that, although he may not be able to provide authority expressly defining the parameters or guidelines for the VSC’s discretion, its abuse of same is readily apparent. In this sense, identifying an abuse of discretion in the U adjustment context calls to mind Justice Stewart’s famous refusal to pursue a workable definition of “pornography”: the concept may not be easily definable, but you know it when you see it. See *Jacobellis v. State of Ohio*, 378 U.S. 184, 197 (1964)(J. Stewart, concurring).

Appellant submits that the VSC abused its discretion in finding that he was or is now affiliated with a gang. For this reason alone, the AAO should withdraw the VSC’s decision.

V. Appellant’s equities far outweigh any negative inferences to be drawn from his arrests.

Appellant’s father regularly and mercilessly beat, humiliated, and otherwise abused him. xxxxxxxxxxxxxxxxxxxx was a violent drunkard, a drug abuser, and an extremely angry man. Indeed, he was the aggressor in the incident which led to Appellant’s mother’s receipt of the U visa. Appellant’s and his mother’s written declarations—attached at Tabs A and C, respectively—detail the ways in which his father terrorized the family:

- He beat and choked Appellant’s mother in front of Appellant and his siblings, causing them to huddle in the corner, crying.

⁸ This is especially true given that, in awarding U status and granting Appellant’s Form I-192 (Application for Advance Permission to Enter as a Nonimmigrant), the VSC already waived any inadmissibility which might arise from Appellant’s youthful indiscretions.

- He regularly beat Appellant, including making Appellant kneel down before him so that he could beat him with his belt.
- He was very jealous—he did not like for Appellant’s mother to bathe, saying that she was cleaning herself for a romantic encounter; sometimes when she was sleeping he would punch her to wake her up, claiming that she was dreaming about another man.
- He made no secret of the fact that he did not like Appellant; sometimes he commented that Appellant was not his son.
- According to Appellant’s mother, he sexually abused one of Appellant’s siblings.

Appellant and his mother made several unsuccessful attempts to escape from Appellant’s father—one time they had to seek refuge at a “shelter” for two days. Finally, when Appellant was around twelve-years-old, some church members loaned Appellant’s mother money to rent an apartment. Appellant has not spoken to his father since.

The damage, however, was already done—the abuse and trauma Appellant suffered as a child caused him to act out, seeking approval and support from various neighborhood youths whom he now considers to have been the “wrong crowd.” From his mother’s declaration:

As my children grew up, especially when they were adolescents, they spent a lot of time after school hanging out with youngsters from the neighborhood. In xxxxxx’s case, I think it was because he did not want to be in the house with my husband.

Tab C at 24. Appellant confirms this in his own declaration:

I do not want to make excuses for my behavior as an adolescent and a younger man. I made some terrible mistakes, all of which resulted from hanging out with the wrong crowd. But I see now that a lot of what I did came from feelings of hurt and loneliness resulting from the violence my dad inflicted on us.

Tab A at 17. (Notably, as discussed at length above, none of the “terrible mistakes” Appellant confesses having made involved convictions or involvement in any way with gangs or gang activity.)

Appellant is now a family man—his removal from the United States would have a devastating impact on not just Appellant, but also his LPR long-term girlfriend (and mother of

his children), his LPR mother, and, of course, his U.S. citizen children. From the declaration of Appellant's girlfriend of the past eight years, Ms. xxxxxxxxxxxx:

If [Appellant] were to get deported I would be affected in many ways[,] especially because at this time he's the main provider and I'm not working... because I'm the one that takes care of the kids[.] [B]ut if he wasn't here I would have to get a job to support our two children[.] [T]he only problem is I have no one to take care of them while I work[:] my parents are older and they can't help me... We would be forced to move to Mexico to be with him[.] It would be hard because we would have to start a new life in a country we barely know and we have nowhere to live because most of our families [*sic.*] live in the United States.

Tab B at 20. Ms. xxxxxxxx also discusses the effect Appellant's absence would have on their U.S. citizen daughters, who are six-years-old and ten-months-old:

Also[,] not only would I be affected if xxxxxxxx were to get deported but his children also would [be affected.] [T]hey love him so much and to not be able to see him every day I know would be heart-breaking[,] especially for my oldest daughter[,] xxxxxxx. She's so attached to him and she's old enough to ask questions and I honestly wouldn't be able to explain to a six-year-old why her father isn't with us.

Id. at 21. Ms. xxxxxxxx concludes by noting that she would be "affected emotionally" by losing Appellant, whom she considers "[her] best friend and the love of [her] life." Id.

Ms. xxxxxxxxxxxx, Appellant's LPR mother, would also be severely affected by Appellant's absence from the United States: "I would miss my son so much if he weren't here."

Tab C at 25. Appellant also provides his mother with financial support and takes her to her doctor's appointments related to her diabetes diagnosis. Appellant's mother confirms that relocation to Mexico is simply not an option for Appellant:

In Mexico there is nowhere for him to live; my parents are already dead. The rest of our family is here. We no longer have a home in Mexico. xxxxxxxx has been in the United States since he was small. He would be lost in Mexico.

Id.

Denial of this appeal would result in exceptional and extremely unusual hardship to Appellant himself. From Appellant's declaration:

If I weren't here, then xxxxxxxx would have to get a job and I have no idea who would take care of our daughters. xxxxxxxx's parents are not in good health—they couldn't take care of our daughters. And I don't think there's anyone else who could handle them. I honestly don't know what they would do if I weren't here. We couldn't go to Mexico—I have some distant cousins in Mexico, but I don't have a relationship with any of them. I have no ties there. I couldn't support a family over there, so they would have to stay here—and that would be devastating to me.

Tab A at 19. For Appellant, returning to Mexico would potentially mean leaving behind his U.S. citizen daughters:

I now have two daughters—6-years-old and 10-months-old. I remember what it was like growing up with my father. I've learned from it. I never—ever—hit my daughters or raise my voice at them. I'm proud of my oldest girl; she's starting first grade right now. When she has a Thanksgiving dinner or some other school event, I'm able to go there as her father. I've taken her everywhere—the aquarium, the zoo, DisneyWorld, the beach.

Id. Noting that his family is “counting on [him] to provide for them,” Appellant concludes his three-page declaration as follows:

When I was younger, I made some mistakes I regret. I'm not excusing them by any means, but I'm older now and have a different mindset. I have matured and am very family-oriented and want to do something with myself in this life—I owe it to myself and to my family. They are counting on me to provide for them. I'm in a better place in my life and I'm blessed so far, so I would like to say thank you for allowing me to get my visa, but I would greatly appreciate if you could allow me to become a permanent resident. It has honestly opened doors for me in so many ways and I want to continue on this path and doing well. Please allow me the opportunity to become someone great.

Id.

Appellant submits that, based on his equities and on the exceptional and extremely unusual hardship that would result to him and his family were he denied adjustment, the AAO is compelled to withdraw the VSC's decision.

[continued on following page]

VI. **Index.**

Per AAO Practice Manual Ch. 7.3(c), Appellant does not herein submit evidence already in the record of proceedings. New evidence is enclosed as referenced in the below index.

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Conclusion

For all the foregoing reasons, the VSC abused its discretion in denying Appellant’s Form I-485 and, accordingly, the instant appeal should be sustained.

Date: August 4, 2017

Respectfully submitted,
CATHOLIC CHARITIES

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