



PROVING MEDICAL AND PSYCHOLOGICAL HARDSHIP FOR NON-LPR CANCELLATION OF REMOVAL

By Anita Gupta

Cancellation of removal and adjustment of status for certain nonpermanent residents, or “Non-LPR Cancellation of Removal,” is an important and common deportation defense for individuals who are in removal proceedings and have resided in the United States for many years. A person qualifies for Non-LPR Cancellation of Removal if they are in removal proceedings and can show that they meet the following requirements: (1) they have been continuously physically present in the United States for at least ten years; (2) have had good moral character for ten years; (3) they have not been convicted of certain offenses [crimes listed in INA sections 212(a)(2), 237(a)(2), or 237(a)(3)]; and (4) to deport them would cause **exceptional and extremely unusual hardship** to a qualifying relative (their LPR or U.S. citizen spouse, child, or parent).

This last requirement, the hardship showing, is often the most difficult requirement for applicants to meet. The language “exceptional and extremely unusual hardship” is cumbersome, and unfortunately, so is the burden it describes. The term “exceptional and extremely unusual hardship” is drawn from statute, but there are no specific regulations to define it. We therefore look to case law and regulations for similar forms of relief, such as suspension of deportation (the precursor to Non-LPR Cancellation) and relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA), for guidance. The hardship standard is a strict one, but the immigration judge must make a hardship determination based on a cumulative analysis of all of the hardship presented in an applicant’s individual case. Where medical and psychological conditions are present in a case, they can be strong and compelling evidence of potential hardship. This practice advisory focuses on proving exceptional and extremely unusual hardship to a qualifying relative by demonstrating **medical and psychological hardship**, especially in light of the BIA’s recent decision, *Matter of J-J-G*.¹

For more information about Non-LPR Cancellation of Removal generally, as well as proving hardship, see ILRC, *Non-LPR Cancellation of Removal: An Overview of Eligibility for Immigration Practitioners* (June 2018)² and *Hardship in Immigration Law* (ILRC 2017). For other removal defense resources, see www.ilrc.org/removal-defense and *Defending Immigrants in Immigration Court* (ILRC 2020).

I. Introduction: Medical and Psychological Hardship

When an immigration judge assesses hardship for Non-LPR Cancellation, they should consider all relevant factors cumulatively.³ It is well established that the presence of medical and/or psychological conditions is an important factor in any hardship determination.⁴ The regulations that define hardship for suspension of

deportation and NACARA specifically provide that “[t]he health condition of the alien or the alien’s children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned” is a factor to be considered.⁵ Case law has also established that difficulty in obtaining adequate medical care is a hardship,⁶ and that health conditions may impact the ability to make a living.⁷

When medical and psychological conditions are present, they will often be the strongest piece of a hardship case.⁸ This is partly because, unlike economic hardship or the loss of community ties, not all families facing deportation would have to deal with any particular medical condition, so it makes framing your client’s case as unique, or “exceptional and extremely unusual,” easier.

The USCIS policy manual lays out a non-exhaustive list of medical hardship factors for the adjudicator to consider in the extreme hardship determination. Although the USCIS policy manual is written for a lesser hardship standard, and not binding for a Non-LPR Cancellation case, as Non-LPR Cancellation cases are heard solely before the immigration courts, the guidance nevertheless provides a helpful roadmap for presenting medical hardship. The factors include:

- Health conditions and the availability and quality of any required medical treatment in the country to which the applicant would be returned, including length and cost of treatment;
- Psychological impact on the qualifying relative due to either separation from the applicant or departure from the United States, including separation from other family members living in the United States;
- Psychological impact on the qualifying relative due to the suffering of the applicant;
- Prior trauma suffered by the qualifying relative that may aggravate the psychological impact of separation or relocation, including trauma evidenced by prior grants of asylum, refugee status, or other forms of humanitarian protection.⁹

Nevertheless, even a serious medical condition may not be enough to prove exceptional and extremely unusual hardship, so you should work with your client to explore other types of hardship that they and their family would face in the event of removal.

II. Documenting Medical and Psychological Conditions

The first step to proving medical or psychological hardship is to document the qualifying relative’s condition. You should obtain a letter from a medical professional (preferably the treating physician) that explains the patient’s diagnosis, treatment, prognosis, and how the condition affects their life and activities. If the applicant or certain family members provide care, such as bringing the patient to medical appointments, ask the doctor to include that information in their letter. The treating doctor may not know anything about conditions in your client’s native country, but may be able to explain how travel, displacement, loss of support, or a new environment might affect the patient’s condition. Copies of medical records, receipts for payment, and medication prescriptions also help document medical or psychological conditions and how they are currently being treated in the United States.

If your client or their relative suffers from a psychological condition, you should obtain a letter from the treating mental health professional, such as a therapist or psychologist. A more detailed psychological evaluation, which usually includes testing and specific diagnoses, may also be helpful. Although these reports can be expensive, some mental health professionals will provide evaluations at reduced or no cost for individuals in need. When there are psychological or emotional conditions present, a professional evaluation may prove to be an extremely compelling piece of evidence. It is particularly helpful to submit evidence demonstrating that the individual is receiving ongoing mental health treatment for their condition. If they are no longer receiving treatment, you should demonstrate why, and submit evidence that the condition remains ongoing, even if no longer receiving treatment.

Keep in mind that even if your client or their family member is not currently undergoing treatment for a psychological condition, the person still may be suffering from an undiagnosed and/or untreated condition, such as depression or anxiety. The stress of a close family member's ongoing deportation proceedings may exacerbate or trigger such conditions. You should talk to your client about these issues. If your client or a family member is struggling, encourage the person to seek mental health treatment or support. Not only might it be truly beneficial to your client or their family member, but showing the presence of a psychological or emotional condition and its ongoing treatment will also strengthen your client's hardship case. Your client or her family member does not have to be in private therapy, which can be expensive. Some individuals benefit from short-term mental health care or might find joining a support group helpful. Ensure that you are able to document participation in any type of treatment or support group.

III. Availability and Quality of Medical Care

Sometimes the medical or psychological condition requires special care and attention that the individual can only receive in the United States, or that would be difficult or prohibitively expensive to obtain in the applicant's native country, resulting in hardship.¹⁰ Simply proving that your client or a qualifying relative suffers from a health or psychological condition and asserting that care will not be the same in the country of deportability is not enough to prove exceptional and extremely unusual hardship.¹¹ First and foremost, consider whether the qualifying relative who has the medical condition will accompany the applicant to their native country in the event of removal. If you are contending that the qualifying relative is most likely to remain in the United States, your argument about the availability and quality of medical care in the applicant's native country may not be applicable, except to the extent that it is relevant to why the qualifying relative will remain in the United States.

If the qualifying relative will accompany the applicant to their native country, you should submit documentation to prove the limited availability of health facilities or medical workers, poor quality of medical treatment, prohibitive cost of treatment or medicine, bad water, poor sanitation, or even potentially harmful climate or air conditions in the home country. Note that "evidence that a qualifying relative will experience a 'lower standard of living' in the country of removal, including a lower standard of medical care," is not enough on its own to meet the requisite hardship standard for Non-LPR Cancellation.¹² Some reports on country conditions that are available online, like those from the U.S. Department of State, include general information on the quality and availability of medical care in other countries. Because some of these reports are written for Americans traveling abroad, they can provide helpful comparisons of the two countries' healthcare systems. In addition, there are many online resources that may help you determine whether certain kinds of medical treatment are available in the client's home country, including newspaper articles, medical journals, and websites maintained by organizations like the World Health Organization (WHO) and Centers for Disease Control and

Prevention (CDC). You will need to conduct your own research, and brainstorm with your client and their loved ones, who may know a great deal about medical and psychological care in your client's native country (but do not rely solely on their knowledge or testimony). They may also be able to think of or have access to sources of information that would help document the quality and availability of healthcare there. A letter from a medical practitioner in your client's native country may be very helpful, if you or your client can obtain one. You should also consult with your client and colleagues in the immigration law field as you attempt to locate an expert on the healthcare conditions in your client's native country. Obtaining expert input on this issue may be necessary and more persuasive than letters or testimony from your client or family and friends who have dealt with the healthcare system in the other country.

When submitting country conditions and healthcare reports, ensure that they are timely and up to date. In recent years, DHS attorneys have increasingly objected to the admission of country conditions reports based on their lack of recency. If the reports were published several years ago and you cannot find more recent reports, submit corroborating evidence showing that the conditions have not changed. Additionally, DHS attorneys often perform their own research, so if there is reliable evidence of comparable or better medical care (such as lower medication costs or comprehensive healthcare coverage) in your client's native country, you need to be aware of that and ready to respond with a reasonable explanation as to why your client will not be able to access that medical care. For example, although quality medical care might be available in the capital city of your client's home country, it may not be accessible in the region where your client is from, and travel to the capital may be unreasonably burdensome or even impossible. If DHS attempts to introduce unreliable evidence, you should also be prepared to object to its admission and make an argument as to why the evidence is unreliable. If possible, demonstrate to the court why your client or their family member will not be able to access quality medical care *for their specific condition*. For example, you may want to show that specific types of treatment for the condition are not available or prohibitively expensive.

Example: Oswaldo is from Honduras and applying for Non-LPR Cancellation in removal proceedings. His wife, Rita, has breast cancer and is a qualifying relative. Rita is also originally from Honduras and plans to accompany Oswaldo if he is removed. Rita is presently undergoing treatment for her condition, which is covered by her medical insurance. She thinks the treatment may be available in Honduras, but that it will be very expensive, and she has heard that the quality of cancer treatment is not as good there. Rita explains her situation to her oncologist and asks him to write a letter describing her condition, the treatment she needs, the possibility of treatment in Honduras, and her prognosis with and without treatment. The doctor agrees to write a letter explaining Rita's diagnosis, prognosis, and treatment, but tells Rita that he does not know anything about medical conditions in Honduras. Rita asks the doctor if he knows anyone else who could write a separate letter about cancer treatment in Honduras. The doctor remembers a classmate who is from Honduras and might be able to help. In addition, Rita will ask her friends, neighbors, and others in her community if they know of anyone who could write the letter she needs. Rita's attorney will ask other legal practitioners who have handled cancellation and/or hardship waiver cases for Honduran clients if they know of an expert with knowledge of medical conditions in Honduras, or if they have any helpful documentation that the attorney has not discovered in their own research.

NOTE: As of the date of this writing (June 2020), we are living through a worldwide pandemic caused by the novel coronavirus, also known as COVID-19, which has killed hundreds of thousands of people across the world.¹³ As you assess medical hardship in your case, think through how this pandemic affects your clients and their qualifying relatives. Vulnerable populations, including people age 65 and older and people with certain underlying conditions, are at particularly high risk of severe illness,¹⁴ and in some locations, hospitals are so overwhelmed with treating infected people that they are unable to provide treatment to individuals suffering from other ailments.¹⁵ It may be helpful to obtain evidence or reports about the COVID-19 infection rate, availability of medical treatment, and hospital conditions in your client's native country. If the qualifying relative has an underlying condition or is immunosuppressed and intends to accompany the applicant back to their native country, the transmission rate in that country may become an important piece of proving medical hardship. Relatedly, if your client suffers from a medical condition but treatment is not readily available in the applicant's native country because medical facilities are at capacity with COVID-19 patients, you should submit evidence of that as well.

IV. Cost of Medical Care and Other Economic Considerations

As you research and talk to your client or experts about medical care in your client's native country, consider the costs of treatment and medications there. If your client or her family member's healthcare is currently covered by insurance or public healthcare benefits in the United States, you should submit evidence of that coverage, and of what the services or medicine would cost in your client's country of origin. This information should come from a reputable source, and you should not rely solely on secondhand knowledge from others. If the government in your client's native country provides "free" or "universal" healthcare, research what is actually covered or if quality or wait times for care are unacceptable.¹⁶ For example, the healthcare coverage in that country may not cover the specific type of treatment that is needed, or may cover treatment provided by certain healthcare providers who are only accessible in big cities. Also, if your client or a qualifying relative is currently working but might be prevented from doing so if their medical or psychological condition worsens in another country, you may use this to support a claim of economic hardship. Similarly, if the individual's condition (for instance, a physical handicap) would make it difficult to find work in the country of deportability, and thereby make medical care costs more prohibitive, the immigration judge should take this into consideration.¹⁷

PRACTICE TIP: Although the immigration judge will not technically consider medical hardship to non-qualifying relatives, you should still argue the hardship that nonqualifying relatives' medical conditions will cause to qualifying relatives. For example, if the applicant has a serious medical condition, the applicant should document the economic hardship the qualifying relatives will suffer if they are forced to devote their resources to providing healthcare to the applicant, in the event of removal. This situation may be particularly likely if the applicant's treatment is currently covered by health insurance in the United States, but would not be covered in the applicant's native country.

V. Exacerbating Factors and Loss of Support

Along with the availability and accessibility of medical or psychological treatment in your client's native country, consider whether moving there might exacerbate a condition. Deportation is usually a traumatic experience and may have a significant effect on the psychological condition of your client's family member(s). Even if the

qualifying relative does not currently suffer from a psychological condition, you can submit evidence showing the likelihood of developing a condition due to the upheaval. If the family member has suffered past trauma, demonstrate how that trauma is likely to trigger or exacerbate a psychological condition. Many studies and reports show that children (especially teenagers) who have been raised in the United States find it particularly difficult to adjust to a new country and often develop mental health conditions as a result.¹⁸ Additionally, several scholarly articles have been published about the psychological impact of a parent's deportation on a child.¹⁹ If the qualifying relative does not plan to accompany the applicant to the other country, the family separation may also have harmful psychological effects on the qualifying relative. Thus, even if the applicant's qualifying relative does not presently suffer from a psychological condition, it is always a good idea to obtain a comprehensive family hardship evaluation from a mental health professional or therapist.

Medical conditions may also be exacerbated by a change in climate, new diet, worse air quality, poor sanitation, or living in a more urban or rural environment.²⁰

Also consider whether travel itself would interrupt treatment or cause additional trauma. If your client or a qualifying relative suffers from a medical condition, you should also discuss who provides support to that individual and whether they would have comparable support in your client's native country. For instance, ask about transportation to medical appointments, payment of health insurance or medical treatment costs, assistance with household chores, companionship, reminders to take or help administering medications, etc. The loss of such support would be an additional hardship on your client or the qualifying relative who suffers from the condition, and should be documented.²¹

Example: Jose is from Mexico, and he is applying for Non-LPR Cancellation in removal proceedings. He has two U.S. citizen children, ages 8 and 10, who are autistic and have diabetes, as well as other related minor medical conditions. Jose's wife is also a U.S. citizen. Jose is the breadwinner for his family, and his income covers most of the family's living expenses. His wife is healthy, works part-time, and cares for the children. The children require intensive care and supervision, including help with daily activities, such as eating and bathing, and accompaniment to regular therapy and doctor appointments. They receive Medicaid, which covers the cost of most of their medical expenses and therapies. If Jose is removed, the children will remain in the United States with their mother. What should Jose argue to demonstrate medical hardship?

Jose should argue that his children will suffer medical hardship if he is removed, along with any other applicable hardship. First, Jose can demonstrate that he does cover some medical expenses, albeit most are covered by Medicaid. Second, Jose may be able to argue that his wife is only able to give the children the intensive, constant care and supervision they need because he works full-time and financially provides for the family. If Jose is removed, his wife will have to start working full-time in order to financially provide for the children, leaving the children without a caretaker during the day. Jose's wife can testify about this, and Jose can also submit evidence showing the high cost of a caretaker for autistic children, explaining why his wife would not be able to afford hiring a caretaker for the kids, even if she is working full-time. Jose should also show why any income he earns in Mexico would not be sufficient to cover his wife and children's financial expenses in the United States, as well as his own in Mexico. Lastly, Jose may argue that his children will seldom be able to visit him in Mexico

because the environment in Mexico will exacerbate their health conditions, and that long-term separation from him will also negatively affect them in a particular way due to their autism, as autistic children are dependent on routine and steadfast support from constant fixtures in their lives, like parents. Importantly, Jose will submit corroborating evidence for each of these contentions, including his own testimony, his wife’s testimony, any other relevant testimony from family members and friends, medical records for the children, letters from the children’s doctors and therapists, country conditions reports (including information about salary and average income in Mexico, and exchange rate information), evidence demonstrating the prohibitive cost of a special needs caretaker, paychecks showing how much Jose earns compared to his wife, evidence of the family’s financial expenses (including any medical expenses not covered by Medicaid), etc.

VI. Discrimination or Stigma

If a qualifying relative suffers from certain types of medical or psychological conditions, the person may face additional hardship if the condition is stigmatized or if the condition may be a source of discrimination in the country where the person is moving. HIV-positive status, mental disability, mental illness, or physical handicaps are examples of conditions that may be stigmatized in some countries.²² You should discuss this possibility with your client and their family, as well as conduct independent research and/or consult with experts.

Example: Rosa is applying for Non-LPR Cancellation. Her husband, Pedro, is a U.S. citizen and her qualifying relative. He has muscular dystrophy, which prevents him from walking and requires him to use a wheelchair. Pedro currently works in an office and has a desk job. If Rosa is removed, Pedro will accompany Rosa to her home country, where workplace discrimination against people with disabilities is rampant, and reports show that people with disabilities are often unable to find a job or paid less than their counterparts. Furthermore, public transportation is not accessible to people using wheelchairs. Rosa will argue that Pedro will face medical and economic hardship in the event of removal, as the discrimination in her home country will make it very difficult for Pedro to find a similar job there, and that even if he does find a job, he will not be properly compensated. She will show that she is not able to financially support her family on her own. In addition, she will demonstrate that public transportation is the primary mode of transportation in her native country, as traffic is a major problem and parking is scarce. If her husband cannot access public transit, his mobility and quality of life will suffer.

VII. New Case Law: *Matter of J-J-G-*

In March 2020, the BIA attempted to make it more difficult to prove that medical hardship rises to level of exceptional and extremely unusual hardship. In the recently-issued decision, *Matter of J-J-G-*, the BIA held that if a hardship claim in the Non-LPR Cancellation context is based on medical hardship, the Respondent must establish that the qualifying relative(s) has a “serious” medical condition, and adequate medical care is not reasonably available in the applicant’s home country (if the qualifying relative plans to go to the applicant’s native country with them, rather than stay in the United States).²³ In the case, the Respondent had six qualifying relatives, including five U.S. citizen children, ranging in age from two months to twelve years old, and an LPR mother.²⁴ The Respondent’s daughter suffered from hypothyroidism (which affected her ability to

regulate metabolic functions); his oldest son had received counseling in past for “aggressive and defiant behavior”; another son had been in counseling in the past for Attention Deficit Hyperactive Disorder (ADHD) and anxiety disorder; and the Respondent’s LPR mom had hypertension.²⁵ The BIA concluded, affirming the Immigration Judge’s decision, that even the cumulative effect of all of the qualifying relatives’ medical hardship was not enough to rise to the level of “exceptional and extremely unusual.”²⁶

Although this decision seems harmful at first blush, it is easily distinguishable by presenting a well-documented case. The main takeaway from *Matter of J-J-G* is to present a strong case and clear claim through consistent supporting evidence and testimony. In *Matter of J-J-G*, the Respondent argued that if he was removed to his native country of Guatemala, his children (particularly his daughter) would not have access to adequate treatment and care for their medical and psychological conditions.²⁷ However, there was conflicting testimony during the proceedings about whether the children would actually accompany the Respondent to Guatemala²⁸ and about the level and cost of healthcare in Guatemala, particularly to treat Respondent’s daughter’s hypothyroidism, which was covered by state benefits in the United States.²⁹ The only evidence to support the Respondent’s claim that the cost of healthcare in Guatemala is prohibitively expensive was the Respondent’s partner’s testimony that she learned about the cost from the internet, which the court determined lacked credibility.³⁰ Conversely, the Respondent’s mother said during her testimony that she thought healthcare in Guatemala was free, which caused the court to further question the credibility of Respondent’s claim regarding the cost of treatment in Guatemala.³¹ Furthermore, there was little or no evidence that the Respondent’s sons had ongoing behavioral and psychological conditions, or that medical or psychological conditions would be exacerbated by a move to Guatemala.³² Instead, the Respondent presented only evidence of past participation in counseling, but the sons were no longer in counseling at the time of the individual hearing, and the underlying issues appeared to have resolved.³³ Lastly, the Respondent was not able to demonstrate that his mother would suffer serious hardship due to her hypertension, as the cost of treatment was covered by state benefits, she would remain in the United States under the care of her daughter if the Respondent was removed, and she was able to manage transportation to doctor’s appointments and the pharmacy on her own.³⁴ There was no evidence documenting any other medical conditions, despite Respondent’s and his mother’s testimony that she also had other medical issues.

Matter of J-J-G reaffirms the need for consistent evidence to support any claims that the qualifying relative has a serious medical condition and that adequate medical care is not available in the applicant’s native country. In its decision, the Board referred back to the Respondent’s burden of proof for Non-LPR Cancellation under INA § 240(c)(4)(B)³⁵ and stated, “Generally, an applicant will lack the firsthand knowledge and medical expertise needed to provide persuasive and sufficiently specific testimony regarding the seriousness of a qualifying relative’s medical condition and the availability of care in the country of removal to meet that burden. The Immigration Judge should therefore determine whether the applicant has submitted sufficient reliable evidence to corroborate his or her testimony in this regard.”³⁶ Thus, testimony alone often is not sufficient. Medical records, letters, affidavits or testimony from medical doctors or experts, news articles and documents outlining the medical care in the country in question, and other evidence are needed. In *Matter of J-J-G*, the Respondent’s partner testified that she thought treatment for their daughter’s hypothyroidism would cost \$1100 in Guatemala, and the court clarified that even a corroborating printout from the internet showing that exact cost might still not be enough to meet the Respondent’s burden of proof; more evidence is often needed.³⁷ Furthermore, although the Respondent had submitted evidence demonstrating that medical facilities in Guatemala provide a lower standard of medical care than those in the United States, the court found that was insufficient to demonstrate that treatment is unavailable in Guatemala.³⁸ However, the court

acknowledged that in the case of a qualifying relative receiving ongoing treatment for a medical condition, “evidence of detrimental consequences that would result from disruption of the treatment regimen is relevant to establishing the requisite hardship.”³⁹

This case also highlights the importance of properly preparing all witnesses for testimony, and ensuring they testify consistently and in a helpful way. Had the contentions about medical hardship been better documented through consistent testimony, written supporting evidence, country conditions reports, and insight from experts, the Respondent may have met the requisite hardship standard for Non-LPR Cancellation. Because the Respondent’s mother gave conflicting testimony about the cost of healthcare in Guatemala, the Immigration Judge was not required to rely on the Respondent and his partner’s testimony about the high cost of medical treatment in Guatemala, as it called into question their claim.⁴⁰ Importantly, *Matter of J-J-G-* does not state that the Respondent’s family members’ medical conditions were not enough to establish requisite hardship and win a Non-LPR Cancellation case. In fact, the BIA clarified, “The hypothyroidism the Respondent’s daughter suffers may constitute a serious medical condition, particularly given the consequences if it is left untreated, but the record reflects that his daughter receives regular treatment for this condition in the United States, and there is no indication that she will be unable to continue treatment if the respondent is removed.”⁴¹

Matter of J-J-G- is also a reminder to argue *why* a medical condition causes hardship. It is not sufficient that a medical condition is present; the applicant must also show why their qualifying relative’s medical condition will cause hardship if the applicant is removed. Similarly, the case reminds us of the importance of stressing the cumulative effect of all hardship factors rises to the level of “exceptional and extremely unusual.” The Respondent in this case had several qualifying relatives, and although medical hardship of just one of the qualifying relatives (such as Respondent’s mom’s hypertension) would generally not be enough to rise to the requisite level of hardship for Non-LPR Cancellation, it could have risen to the level of “exceptional and extremely unusual” considering all the factors collectively and presenting strong and consistent corroborating evidence of each.

Nevertheless, federal circuit courts have yet to interpret this case, so it remains to be seen whether courts will use this decision to raise the bar for Non-LPR Cancellation cases involving medical hardship.

VIII. Conclusion

Medical and psychological hardship is often the cornerstone of a strong Non-LPR Cancellation claim. However, even if the qualifying relative suffers from a serious, truly debilitating medical condition, an immigration court may still find that the Respondent has not met the “exceptional and extremely unusual” requisite hardship standard if that medical condition and ensuing hardship are not properly documented with supporting evidence and testimony. It is necessary to argue creatively and think through every possible angle of hardship and avenue for obtaining evidence, especially as immigration judges consider the cumulative effect of all hardship factors.

End Notes

¹ 27 I. & N. Dec. 808 (BIA 2020).

² Available at https://www.ilrc.org/sites/default/files/resources/non_lpr_cancel_remov-20180606.pdf.

³ See *Matter of Ige*, 20 I. & N. Dec. 880, 882 (BIA 1994); *Matter of O-J-O*, 21 I. & N. Dec. 381 at 403 (concurring opinion); see also *Arrozal v. INS*, 159 F.3d 429, 433 (9th Cir. 1998); *Matter of Recinas*, 23 I. & N. Dec. 467, 472 (BIA 2002).

⁴ *Matter of Cervantes*, 22 I. & N. Dec. 560, 566 (BIA 1999).

⁵ 8 C.F.R. § 1240.58(b)(3).

⁶ See, e.g., *In re Mazunzo Andrew Banda*, 2008 WL 762634 at *3 (BIA 2008); *Luna v. INS*, 709 F.2d 126, 128 (1st Cir. 1983); *Reyes v. INS*, 673 F.2d 1087 (9th Cir. 1982); *In re Anderson*, 16 I. & N. Dec. 596, 597-98 (BIA 1978); see also *Men Keng Chang v. Jiugni*, 669 F.2d 275, 278 (5th Cir. 1982); *In re Blanca Aida Franco-Prado*, A23 023 746 (BIA 1980) (applicant was granted suspension after submitting evidence of her daughter's need for specialized treatment for an eye condition and unavailability of the same treatment in Guatemala).

⁷ See, e.g., *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) (the applicant's disability was a consideration in finding hardship based on his complete inability to work); *Urban v. INS*, 123 F.3d 644, 648-49 (7th Cir. 1997) (finding the BIA's failure to consider the applicant's total inability to find work in Poland due to her age and health problems "quite troubling").

⁸ However, medical hardship is not required to meet the requisite hardship standard. *Matter of Recinas*, 23 I. & N. Dec. 467, 470 (BIA 2002),

⁹ USCIS Policy Manual, Volume 9, Part B, Chapter 5(D). The USCIS Policy Manual is a useful guide for framing your hardship argument, but it is just a policy guide that can be changed or rescinded at any time. Before you reference the manual, be sure to review the most recent version on USCIS' website, <https://www.uscis.gov/policy-manual>.

¹⁰ *Matter of Louie*, 10 I. & N. Dec. 223, 225 (BIA 1963); *Reyes v. INS*, 673 F.2d 1087, 1089 (9th Cir. 1982); *Luna v. INS*, 709 F.2d 126, 128-129 (1st Cir. 1983).

¹¹ *Matter of J-J-G*, 27 I. & N. Dec. 808 (BIA 2020).

¹² *Matter of Monreal*, 23 I. & N. Dec. 56, 63-64 (BIA 2001); cf. *Matter of Correa*, 19 I. & N. Dec. 130, 134 (BIA 1984) ("The fact that the medical facilities in Colombia may not be as good as they are in this country does not mean that [the applicant's] children . . . will suffer extreme hardship there.")

¹³ World Health Organization, "Coronavirus disease (COVID-2019) situation reports," <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports/>.

¹⁴ Centers for Disease Control and Prevention, "People Who Are at Higher Risk for Severe Illness," May 14, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

¹⁵ Sudarsan Raghavan, "Egypt thought it dodged the worst of the pandemic. But now hospitals are being overwhelmed," *The Washington Post* (June 17, 2020), https://www.washingtonpost.com/world/middle_east/egypt-thought-it-dodged-the-worst-of-the-pandemic-but-now-hospitals-are-being-overwhelmed/2020/06/16/36397b8e-af2c-11ea-98b5-279a6479a1e4_story.html.

¹⁶ See, e.g., *Urban v. INS*, 123 F.3d 644, 649-650 (7th Cir. 1997) (finding significant expert testimony that even the poorest patients in Poland's public hospitals had to procure their own medications and supplies, including basic items like syringes).

¹⁷ See, e.g., *id.* at 648-49; *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981).

¹⁸ Damien Cave, "American Children, Now Struggling to Adjust to Life in Mexico," *New York Times* (June 18, 2012), <https://www.nytimes.com/2012/06/19/world/americas/american-born-children-struggle-to-adjust-in-mexico.html>.

¹⁹ See Lisseth Rojas-Flores, et al., "Trauma and Psychological Distress in Latino Citizen Children Following Parental Detention and Deportation," *Psychological Trauma: Theory, Research, Practice, and Policy* (2016), <https://www.ncbi.nlm.nih.gov/pubmed/27504961>; Ajay Chaudry, et al., "Facing Our Future: Children in the Aftermath of Immigration Enforcement" (Washington, DC: The Urban Institute, 2010), 41-42, <https://www.urban.org/sites/default/files/publication/28331/412020-Facing-Our-Future.PDF>;

Luis H. Zayas and Laurie Cook Heffron, "Disrupting young lives: How detention and deportation affect US-born children of immigrants," *American Psychological Association, CYF News* (2017), <https://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation>; Regina Day Langhout, et al., "The Effects of Deportation on Families and Communities," *American Journal of Community Psychology* (2018), <https://onlinelibrary.wiley.com/doi/10.1002/aicp.12256>.

²⁰ See, e.g., *Prapavat v. INS*, 662 F.2d 561, 562 (9th Cir. 1981) (finding the BIA had failed to give adequate consideration to evidence that medical conditions suffered by applicant's daughter could worsen in the Thai climate).

²¹ See, e.g., *Matter of Louie*, 10 I. & N. Dec. 223, 225 (BIA 1963) (Respondent provided financial support to his elderly U.S. citizen father and drove him to weekly medical appointments. The father had no other close relatives in the United States to provide support).

²² The BIA discussed the stigmatization of HIV extensively in *In re: Oscar Alberto Argueta*, 2003 WL 23521910 (BIA Nov. 14, 2003). Although the BIA found that HIV was not sufficiently stigmatized in Honduras to award the applicant relief, practitioners can look to this case for ways to distinguish their own fact patterns.

²³ *Matter of J-J-G-*, 27 I. & N. Dec. 808 (BIA 2020).

²⁴ *Id.* at 809.

²⁵ *Id.* at 809-810.

²⁶ *Id.* at 814.

²⁷ *Id.* at 809.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 813.

³³ *Id.*

³⁴ *Id.* at 810.

³⁵ INA § 240(c)(4)(B) states, “In evaluating the testimony of the applicant or other witness in support of the application, the immigration judge will determine whether or not the testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant has satisfied the applicant’s burden of proof. In determining whether the applicant has met such burden, the immigration judge shall weigh the credible testimony along with other evidence of record. Where the immigration judge determines that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence.”

³⁶ *Matter of J-J-G-* at 811-812.

³⁷ *Id.* at 812 n.6.

³⁸ *Id.* at 812-813.

³⁹ *Id.* at 812 n.5.

⁴⁰ *Id.* at 812 (citing *Matter of D-A-C-*, 27 I. & N. Dec. 575, 579 (BIA 2019) (“An Immigration Judge ‘is not required to accept a respondent’s assertions, even if plausible, where there are other permissible views of the evidence based on the record.’”))

⁴¹ *Id.* at 812.



San Francisco
 1458 Howard Street
 San Francisco, CA 94103
 t: 415.255.9499
 f: 415.255.9792

ilrc@ilrc.org www.ilrc.org

Washington D.C.
 1015 15th Street, NW
 Suite 600
 Washington, DC 20005
 t: 202.777.8999
 f: 202.293.2849

Austin
 6633 East Hwy 290
 Suite 102
 Austin, TX 78723
 t: 512.879.1616

San Antonio
 500 6th Street
 Suite 204
 San Antonio, TX 78215
 t: 210.760.7368

About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC’s mission is to protect and defend the fundamental rights of immigrant families and communities.