Immigration Attorney Magdalena Cuprys publishes article on the Extreme Hardship Standard within Cancellation of Removal

In her new article in her Instruction Series, Florida lawyer Magdalena Cuprys examines further in depth the Extreme Hardship Standard in removal defense


Magdalena Cuprys, Immigration Lawyer in Florida

MIAMI, FLORIDA, UNITED STATES, October 24, 2018 /EINPresswire.com/ -- In her continuation of the Instruction Series on various forms of "Relief from Removal," Immigration Attorney Magdalena Cuprys examines the Extreme Hardship Standard contained within the Cancellation of Removal defense, including examples of evidence which are useful in attempting to meet this heavy evidentiary burden. The complete article will be published in her Blog https://magdalenacuprysblog.blogspot.com/

Ms. Cuprys notes that the Exceptional and Extremely Unusual hardship is often the most difficult requirement to prove for individuals applying in Cancellation of Removal cases. It was originally born out of an old Deportation Defense remedy known as Suspension of Deportation. This old standard was governed under the old Section of the Immigration & Nationality Act (INA) – Section 244(a)(2) which was required for Suspension of Deportation Applicants who had committed certain crimes. The INA also has a stricter standard, "Exceptional and Extremely Unusual Hardship."

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>
> *Magdalena Cuprys, Immigration Lawyer*

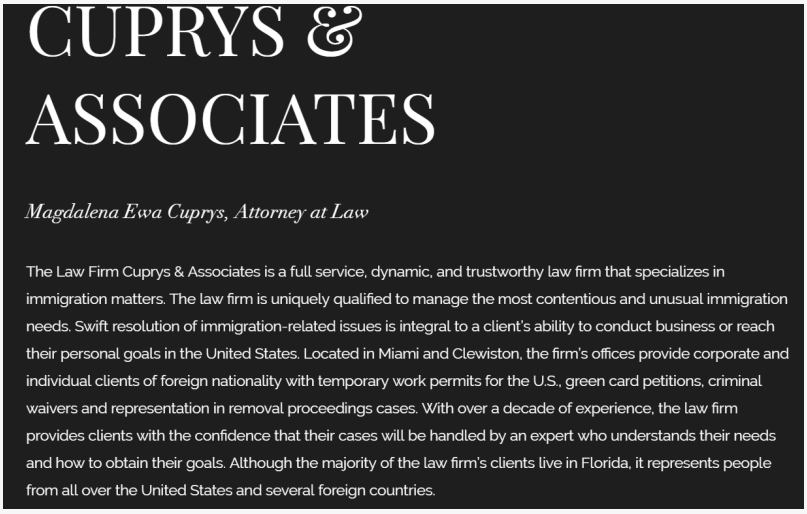
This stricter standard became more widespread after Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996. IIRIRA effectively replaced Suspension of Deportation with "Cancellation of Removal for Certain Nonpermanent Residents" (non-LPR cancellation) under INA § 240A(b). The Applicant must show that Deportation/Removal will cause exceptional and extremely unusual hardship to a "Qualifying Relative" of the Applicant.

One important difference, however, was the application of this heightened hardship standard to all Cancellation of Removal applicants, not just those who have committed certain crimes. In

addition to demanding a higher showing of hardship, non-LPR Cancellation also narrowed whose hardship matters. An applicant for this form of relief must establish that her removal would result in exceptional and extremely unusual hardship to her U.S. citizen or LPR spouse, child(ren), or parent(s) who shall remain in the USA after the Applicant's Removal. Hardship to the applicant herself is technically irrelevant.

To establish such extreme hardship, an Applicant must demonstrate that Deportation/Removal from the USA would result in a degree of hardship (damages) to such relative beyond that typically associated with Deportation/Removal. For example – the extreme hardship standard requires more than the mere economic deprivation that might result to the qualifying relative(s) after the individual's Removal from the USA.

As there is not one exact concrete definition of what exactly constitutes such extreme and unusual hardship, therefore there is also not one single factor that is dispositive of extreme and unusual hardship in and of itself. The Immigration Court weighs the "totality of the evidence" in attempts at determining whether such standard exists and has been met in each individual case.



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However, the Immigration Courts do specifically take into account the following factors:

1. Age of the Qualifying Relative(s) at time of Applicant's potential Removal from the USA;

2. Age, number and immigration status of all children, as well as their ability to speak the native language and ability to adjust to life in the home country if family departs the US with the Applicant after removal;

3. Medical Conditions of Family and availability of suitable medical care/treatment in Home Country;

4. Relative's ability to obtain gainful employment in Home Country designated for removal;

5. Relative's length of residence in USA;

6. Financial Impact of Applicant's departure upon those qualifying relative's remaining in USA;

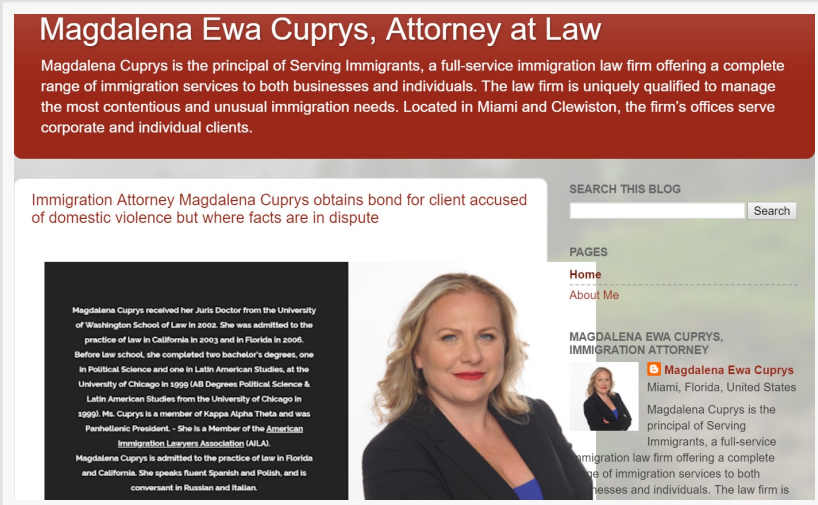
7. The impact upon disruption of educational opportunities in the USA for remaining relative(s);

8. The psychological impact of the Applicant's Deportation/Removal upon relative;

9. The Political and Economic conditions in the country to which the qualifying relative would return to with Applicant;

10. Family members residing in as well as any other ties to the Home Country to which relative returned;

11. Contributions and ties of relative to the community and US as a whole, including degree of assimilation & integration within American society.



Blog of Immigration Attorney Magdalena Cuprys

Attorney profile of Magdalena Cuprys at www.solomonlawguild.com

SAMPLE EVIDENCE

Generally, such hardship evidence can take the form of the following:

1. Evidence of the Bona Fides (legal proof) regarding documenting the existence of the qualifying family relationship:
- Such can take the form of Birth certificates, marriage certificates, Petition Approvals, Letters from friends, co-workers, neighbors, relatives, fellow church goers, etc. that personally know of the meritorious relationship. These must be provided in Affidavit/notarized format.

2. For Applicant and legal family members in the US:
Evidence of Medical conditions of his/her qualifying relatives. Current letters from treating Physician(s) documenting medical condition, severity of condition as well current treatment and prognosis, hospital records;

3. Issue relating to Family Support:
These can take the forms of: Financial, Emotional, Psychological, etc.).
Psychological evaluations relating to the relative(s) and the trauma/anxieties to them resulting from the forced separation are valuable in demonstrating and proving such hardships.

Also, documentation supporting the financial burden that the qualifying relative will bear personally if the Applicant is not allowed to stay in the US.

4. For Applicant and legal immediate family members in the US: Attestations of good moral character.
One should obtain/provide statements & affidavits from those members of high standing in the community who have known the Applicant and his/her relatives in the USA. They should state their status in the USA, how and for how long they have known the family members, and that

they honest, reliable, trustworthy, and other good qualities – to be used to demonstrate why he/she is an asset to the U.S.A. and a benefit to their specific community.

5. For qualifying family members:
School records of children, Report Cards, Awards, Statements from Teachers as to performance in school and positive development, Certificates of Achievement, if applicable.

6. Evidence of stable and reliable employment of the Applicant.

7. Evidence of physical presence in the US for 10 years. Include lease agreements, rental agreements, affidavits, bills, employment contracts, paychecks, bank records, licenses, receipts, letters, school and employment records.

Evidence of tax payments, employment authorization cards (work permits), etc. Any document that would serve the purpose of proving that applicant has continuously been physically present in the US are mandatory.

8. General evidence as to Applicant's contribution to the U.S. community.
Examples are Reference Letters, any awards, degrees, diplomas, volunteer work, religious participation, charitable contributions, certifications, etc. to demonstrate what he/she has accomplished and what positive attributes he/she can bring to the USA.

9. Copies of all Tax Returns submitted while employed in the USA.

10. Evidence of Rehabilitation: If any prior violations – obtain all Court Records, Probation Reports, Counseling Programs attended, certifications, etc.

Please be advised that this is by no means an exhaustive list, and should in no way be relied upon exclusively as such are only examples for informational purposes and cannot be substituted for advice of Counsel. Specific documentation to be submitted in such cases must only be considered after careful examination by competent Immigration Counsel.

Once again, this list is not exhaustive, as there may be other factors relevant to the issue of extreme hardship in a particular case. The factors listed above should not preclude the consideration of other factors raised by the Applicant or their Counsel, nor is an Applicant required to show that each of the aforementioned applies in the Applicant's case in order to establish extreme hardship.

Ultimately the "Extreme Hardship Standard" must be evaluated on a case-by-case basis after a review of all the particular circumstances in the case. Please note that none of the factors listed alone, or taken together, automatically establishes a claim of extreme hardship.

Conversely, an adjudicator is not required to consider factors that have not been raised in making an extreme hardship determination.

These hardship cases are a Discretionary Determination demonstrating that a client has met the requisite hardship standard is difficult not only because "hardship" is not defined, but also because the hardship determination is a discretionary one.

Magdalena Cuprys explains that the adjudicator has a lot of freedom when deciding whether a particular situation constitutes hardship. Moreover, discretionary decisions are unreviewable by federal courts, meaning that the hardship determinations by the Immigration Court and Board of Immigration Appeals (BIA) cannot be appealed to the Federal Appellate Courts.

About Magdalena Ewa Cuprys

Magdalena Cuprys is the principal of Serving Immigrants, a full-service immigration law firm offering a complete range of immigration services to both businesses and individuals. The law firm is uniquely qualified to manage the most contentious and unusual immigration needs. Swift resolution of immigration-related issues is integral to a client's ability to conduct business or reach their personal goals in the United States. Located in Miami and Clewiston, the firm's offices provide corporate and individual clients of foreign nationality with temporary work permits for the U.S., green card petitions, criminal waivers and representation in removal proceedings cases. With over a decade of experience, the law firm provides clients with the confidence that their cases will be handled by an expert who understands their needs and how to obtain their goals. Although the majority of the law firm's clients live in Florida, it represents people from all over the United States and several foreign countries.

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