

Immigration Court: BIA**Case:** *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001) (en banc)**Date:** May 4, 2001**Adjudicated by:** Scialabba, Dunne, Heilman, Schmidt, Holmes, Hurwitz, Villageliu, Filppu, Cole, Guendelsberger, Mathon, Jones, Grant, Moscato, Miller, Brennan, Espenoza, Osuna, Ohlson.**Opinion:** Holmes**Concurrence/Dissent:** Rosenberg**Tags:** Cancellation of removal, exceptional and extremely unusual hardship, extreme hardship, qualifying relatives**Question Presented:** What is required to establish exceptional and extremely unusual hardship?

- Will USC children or parents experience exceptional and extremely unusual hardship if Respondent is removed?

Holdings: Hardship standard was not met here. Must demonstrate hardship that is substantially beyond that which would ordinarily be expected to result from the alien's deportation; doesn't have to be "unconscionable."**Rationale:** Has to meet a higher standard than "extreme" hardship for suspension of deportation cases.

- "even considering all of the factors presented cumulatively, we find that the respondent has not met his burden of establishing that either his children or his parents would suffer exceptional and extremely unusual hardship if he is deported." 65
- "The respondent has not provided evidence to establish that his qualifying relatives would suffer hardship that is substantially different from, or beyond, that which would normally be expected from the deportation of an alien with close family members here." 65

Facts: (57) Citizen of Mexico living in U.S. since 1980. Wife departed for Mexico with infant child. Has two older USC children, 12 and 8. Supports wife and children, has seven siblings and parents who reside lawfully in the U.S.**Procedural History:**

- **IJ:** found that Respondent met good moral character, continuous physical presence, and an exercise of discretion—but not exceptional and extremely unusual hardship.

Appeals to Statute & Precedent:

- **§240B(b):** voluntary departure
- **§240A(b):** cancellation of removal for nonpermanent residents
 - **§240A(b)(1)(D):** meaning of "exceptional and extremely unusual hardship"
- ***Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978):** suspension of deportation case, and the definition of "extreme hardship."
- ***Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001):** finding extreme hardship prong (for suspension of deportation) satisfied in hardship to 15-year-old USC daughter of respondent who would be removed to Taiwan with no Chinese language ability.
- ***Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996):** suspension of deportation and extreme hardship.

Relevant U.S. History:

- **1996: Cancellation of Removal Statute** was enacted to replace “extreme hardship” standard from previous provision.
 - Increased physical presence from 7 to 10 years
 - Hardship NOT to the noncitizen, but to a USC/LPR spouse, child, or parent
 - “Extreme” replaced by “exceptional and extremely unusual” hardship
- **1952: Immigration and Nationality Act:** original use of “exceptional and extremely unusual hardship” in first suspension of deportation statute.

Discussion:

- Exceptional = “circumstances in which the exception to the norm is very uncommon.” 59
- “It is obvious . . . under the plain meaning of the words used in the two statutes, that the hardship standard for cancellation of removal is a higher one than that under the suspension of deportation statute.” 59
- “The legislative history also plainly states that Congress intended to tighten the hardship standard, in part as a response to what it saw as a weakening of the extreme hardship requirement in certain precedent decisions of this Board.” 59
- “the alien must provide evidence of harm to his spouse, parent, or child *substantially beyond that which ordinarily would be expected to result from the alien’s deportation.*” 59 (quoting H.R. Conf. Rep. No. 104-828 (emphasis added in *Monreal*)).
- “We are not persuaded, however, that the relevant cancellation standard should be that a respondent’s deportation be ‘unconscionable’ in its effect on a qualifying relative before a respondent can be found eligible for cancellation of removal under section 240A(b) of the present Act.” 60
- “many of the factors that should be considered in assessing ‘exceptional and extremely unusual hardship’ are essentially the same as those that have been considered for many years in assessing ‘extreme hardship,’ but they must be weighed according to the higher standard required for cancellation of removal.” 63
- *Matter of Anderson* factors:
 - Age of respondent
 - Family ties in U.S. & abroad
 - Length of residence
 - Health of respondent & qualifying family members
 - Political and economic conditions in country of return
 - Possibility of other means of adjusting status
 - Community involvement
 - Immigration history

- For exceptional & extremely unusual hardship:
 - Age, health, circumstances of qualifying LPR/USC relatives.
 - E.g. – elderly parents entirely dependent on a respondent
 - Qualifying child with serious health issue, special educational needs
 - “A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship.” 64
- “Were this a suspension of deportation case, where only extreme hardship is required and where hardship to the respondent himself could be considered, the respondent might well have been found eligible for that relief.” 64
 - “However, under the cancellation of removal requirements, we cannot conclude that the respondent has established that the hardship to his citizen children or lawful permanent resident parents rises to the higher level of ‘exceptional and extremely unusual hardship.’” 64
- Application:
 - Father in good health & young & able to work; mother already in Mexico, so family will be reunited; oldest child can speak, read, and write Spanish; no evidence regarding hardship to LPR parents.