

Immigration Court: BIA**Case:** *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002)(en banc)**Date:** Dec. 19, 2002

Adjudicated by: Scialabba, Dunne, Schmidt, Holmes, Hurwitz, Villageliu, Filppu, Cole, Guendelsberger, Rosenberg, Grant, Moscato, Miller, Brennan, Espenosa, Osuna, Ohlson, Hess, Pauley

Opinion: Villageliu

Tags: Cancellation, 42B, exceptional and extremely unusual hardship, USC children, single mother, hardship factors

Question Presented: Did IJ err in denying application for cancellation of removal due to exceptional and extremely unusual hardship to USC children?

Holdings: Appeal sustained: Respondent has demonstrated exceptional and extremely unusual hardship to USC children.

Rationale: “The hardship factors present in this case are more different in degree than in kind from those present in *Monreal* and *Andazola* and, in our view, is sufficient to be considered exceptional and extremely unusual.” 472

Facts: 467-68 Single mother, native and citizen of Mexico, with four USC kids plus two minor kids who are citizens of Mexico. Sole breadwinner, no family in Mexico, USC kids don’t speak Spanish. Parents are LPRs, five siblings are USCs. Overstay of NIVs. 470 – no other means of immigrating, especially because of visa backlogs.

Appeals to Statute & Precedent:

- **INA §240A(b) / 8 U.S.C. §1229b(b) (2000):** Cancellation of removal for certain nonpermanent residents.
- ***Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001):** cancellation of removal case considering “exceptional and extremely unusual” hardship standard. Has to be a hardship that is “substantially beyond that which would ordinarily be expected to result from the person’s departure.” (*Recinas* at 468) Hardship does not need to be “unconscionable.” (*Monreal* at 60). “[C]onsideration should be given to age, health, and circumstances of qualifying family members, including how a lower standard of living or adverse country conditions in the country of return might affect those relatives.” (*Recinas* at 468; *Monreal* at 63).
- ***Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002):** cancellation, exceptional and extremely unusual hardship (not met here). Family financially stable and could make it in Mexico. “Accordingly, we found that the case presented a common fact pattern that was insufficient to satisfy the exceptional and extremely unusual hardship standard.” *Recinas* at 469; *Andazola* at 324.

Relevant U.S. History:

- **1996:** New hardship standards for cancellation of removal.

Discussion:

- “Cancellation of removal cases coming before the Immigration Judges and the Board must therefore be examined under the standards set forth in those cases.” 469 (i.e., *Monreal* and *Andazola*).
- “the exceptional and extremely unusual hardship standard for cancellation of removal applicants constitutes a high threshold that is in keeping with Congress’s intent to substantially narrow the class of aliens who would qualify for relief.” 470
- “Nevertheless, the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.” 470
- This one is distinguishable:
 - “We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met.” 470
- Analysis: (471-472)
 - Children dependent on mother for financial support
 - USC children do not know Spanish
 - LPR mother does childcare now; no extended family in Mexico to help