25-2972-ag
Buestan Perez v. Blanche

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of November, two thousand twenty-six.

PRESENT: AMALYA L. KEARSE,
DENNY CHIN,
MYRNA PÉREZ,
Circuit Judges.

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JOSE ANTONIO BUESTAN PEREZ,
ROSA HERMELINDA LLIVIGANAY LLIVIGANAY,
Petitioners,

-v- No. 25-2972-ag

TODD BLANCHE, UNITED STATES ATTORNEY GENERAL,
Respondent.

- -x

FOR PETITIONERS: Usman B. Ahmad, Long Island City, New York

FOR RESPONDENT: Brett A. Shumate, Assistant Attorney General, Civil Division; Cindy S. Ferrier, Assistant Director; Micah Engler, Trial Attorney, Office of Immigration Litigation, U.S. Department of Justice, Washington, D.C.

On petition for review of a final order of the Board of Immigration Appeals ("BIA").

UPON DUE CONSIDERATION, IT IS ORDERED, ADJUDGED, AND DECREED that the petition for review is **DENIED**.

Petitioners Jose Antonio Buestan Perez and Rosa Hermelinda Lliviganay Lliviganay, natives and citizens of Ecuador, seek review of a November 7, 2025, decision of the BIA affirming a February 27, 2023, decision of an Immigration Judge ("IJ") denying their applications for cancellation of removal. *In re Buestan Perez & Lliviganay Lliviganay*, Nos. A212 944 010/011 (B.I.A. Nov. 7, 2025), *aff'g* Nos. A212 944 010/011 (Immigr. Ct. N.Y.C. Feb. 27, 2023). We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We have reviewed the IJ's decision as modified by the BIA, less the finding regarding moral character that the BIA declined to reach. *See Al Saidi v. Blanche*, 185 F.4th 286, 296 (2d Cir. 2026). Our jurisdiction to review a denial of cancellation of removal is limited to constitutional claims and questions of law. *See* 8 U.S.C. § 1252(a)(2)(B)(i), (D). A question of law may arise if the agency applies the wrong legal standard, *see Barco-Sandoval v. Gonzales*, 516 F.3d 35, 39-40 (2d Cir. 2008), or "totally

overlook[s]" relevant evidence or "seriously mischaracterize[s]" the record, *Mendez v. Holder*, 566 F.3d 316, 323 (2d Cir. 2009) (per curiam). And the application of the hardship standard to established facts is a reviewable question of law. *Wilkinson v. Garland*, 601 U.S. 209, 222 (2024). The underlying factual findings, however, are unreviewable. *Id.*; *see also Penaranda Arevalo v. Bondi*, 130 F.4th 325, 337-38, 340 (2d Cir. 2025). "We review constitutional claims and questions of law *de novo*," *Paucar v. Garland*, 84 F.4th 71, 80 (2d Cir. 2023), and the agency's hardship determination in cancellation of removal proceedings for clear error, *see Toalombo Yanez v. Bondi*, 140 F.4th 35, 42 (2d Cir. 2025).

Petitioners had the burden of establishing statutory eligibility for cancellation of removal, *see* 8 U.S.C. § 1229a(c)(4)(A)(i), by showing, as relevant here, "that removal would result in exceptional and extremely unusual hardship to" their U.S.-citizen children, *id.* § 1229b(b)(1)(D). "[E]xceptional and extremely unusual hardship" is hardship "substantially beyond the ordinary hardship that would be expected when a close family member leaves this country." *Garcia Carrera v. Garland*, 117 F.4th 9, 12 (2d Cir. 2024) (per curiam) (quoting *In re Monreal-Aguinaga*, 23 I. & N. Dec. 56, 62 (B.I.A. 2001)). Relevant factors include "the ages, health, and circumstances [of the] qualifying . . . relatives." *Id.* (quoting *In re Monreal-Aguinaga*, 23 I. & N. Dec. at 63). The factfinder should assess "the cumulative effect" of each of the hardships combined. *Id.* When a claim is based on the health of a qualifying relative, the BIA has

required an applicant to "establish that the relative has a serious medical condition and, if he or she is accompanying the applicant to the country of removal, that adequate medical care for the claimed condition is not reasonably available in that country." *Matter of J-J-G-*, 27 I. & N. Dec. 808, 811 (B.I.A. 2020) (footnote omitted).

Petitioners argue that the agency misapplied its caselaw and misapprehended the hardship that would result from their children's medical conditions, including asthma, if the children were to accompany Petitioners to Ecuador. We are not persuaded.

Petitioners challenge the IJ's citation of *Matter of Pilch*, 21 I. & N. Dec. 627 (B.I.A. 1996). But the IJ cited the case for the uncontroversial proposition that a lower standard of living, including in medical care, does not satisfy the hardship requirement, and in any event the BIA did not rely on the case. *See Lin Zhong v. U.S. Dep't of Just.*, 480 F.3d 104, 122 (2d Cir. 2007) (limiting judicial review to reasons given by the BIA), *abrogated on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411 (2023). Petitioners also insist that the BIA was wrong to compare their case to *Matter of J-J-G-*, and while the credibility considerations are different, that case supplied the applicable legal standard and involved similar facts. 27 I. & N. Dec. at 812 (weighing lack of evidence for proposition that daughter's treatment would be disrupted).

Finally, even under the less deferential clear-error standard, the record does not compel a conclusion that Petitioners' children will experience exceptional and

extremely unusual hardship in Ecuador. *See Toalombo Yanez*, 140 F.4th at 44 (explaining that a finding is clearly erroneous if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed" (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948))). On a visit to Ecuador in 2022, Petitioners' daughter suffered an asthma attack and was hospitalized for six days, but she received care and remained in the country another three weeks without difficulty. The agency was entitled to discount background materials that were out of date and described different populations. Because Petitioners failed to show that their children would not receive adequate care in Ecuador, the agency's determination that their children would not suffer "exceptional and extremely unusual hardship" on account of their medical conditions was not clearly erroneous. 8 U.S.C. § 1229b(b)(1)(D); *Matter of J-J-G-*, 27 I. & N. Dec. at 811.

We have considered Petitioners' remaining arguments and conclude they are without merit. For the foregoing reasons, we **DENY** the petition for review of the BIA's final order.

FOR THE COURT:
Catherine O'Hagan Wolfe
Clerk of Court