25-376
Pomavilla Falcon v. Blanche

BIA
Conroy, IJ
A206 289 784/783

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 9th day of November, two thousand twenty-six.

PRESENT:

BARRINGTON D. PARKER,
GERARD E. LYNCH,
WILLIAM J. NARDINI,
Circuit Judges.

Natividad Pomavilla Falcon, Luis Antonio Pichazaca Mayancela,
***Petitioners*,**

v. **25-376**

Todd Blanche, United States Attorney General,
***Respondent*.**

FOR PETITIONERS: Bruno J. Bembi, Hempstead, NY.

FOR RESPONDENT: Brett A. Shumate, Assistant Attorney General; Sarah A. Byrd, Senior Litigation Counsel; Joannabelle M. Aquino, Trial Attorney, Office of Immigration Litigation, United States Department of Justice, Washington, DC.

UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

Petitioners Natividad Pomavilla Falcon and her husband Luis Antonio Pichazaca Mayancela, natives and citizens of Ecuador, seek review of a February 6, 2025, decision of the BIA affirming a November 18, 2019, decision of an Immigration Judge ("IJ") denying their applications for cancellation of removal for failure to show the requisite hardship to their qualifying relatives. *In re Pomavilla Falcon,* Nos. A 206 289 784/783 (B.I.A. Feb. 6, 2025), *aff'g* Nos. A 206 289 784/783 (Immig. Ct. N.Y. City Nov. 18, 2019). We assume the parties' familiarity with the case.

We have reviewed the IJ's decision as supplemented by the BIA. *See Al Saidi v. Blanche*, 185 F.4th 286, 296 (2d Cir. 2026). Our jurisdiction to review the 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); *Patel v. Garland*, 596 U.S. 328, 336–40 (2022). Questions of law may arise when the agency applies an incorrect legal standard, *Barco-Sandoval v. Gonzales*, 516 F.3d 35, 40 (2d Cir. 2008), or "totally overlook[s]" or "seriously mischaracterize[s]" crucial parts of the record, *Mendez v. Holder*, 566 F.3d 316, 323 (2d Cir. 2009).[1] The application of the hardship standard to established facts is a reviewable question of law. *Wilkinson v. Garland*, 601 U.S. 209, 225 (2024). However, underlying factual findings, such as "credibility, the seriousness of a family member's medical condition, or the level of financial support a noncitizen currently provides[,]" are unreviewable. *Id.*; *see also Penaranda Arevalo v. Bondi*, 130 F.4th 325, 340 (2d Cir. 2025) ("A

[1] Unless otherwise indicated, in quoting cases, all internal quotation marks, alterations, emphases, footnotes, and citations are omitted.

challenge to the agency's weighing of the evidence, or the logic it employed in drawing inferences from it, no less than a challenge to the factual findings that result from such analysis, raises questions of fact[.]"). We review constitutional claims and pure questions of law *de novo*, *Paucar v. Garland*, 84 F.4th 71, 80 (2d Cir. 2023); *see also Urias-Orellana v. Bondi*, 607 U.S. 537, 543 n.1 (2026), and when considering a hardship determination in the context of cancellation of removal, we review the application of law to established facts for clear error, *see Diaz v. Blanche*, --- F.4th ----, 2026 WL 3341223, at *1 (2d Cir. Nov. 5, 2026); *Toalombo Yanez v. Bondi*, 140 F.4th 35, 42–43 (2d Cir. 2025).

Cancellation of removal is discretionary relief available to nonpermanent residents who can "establish[] that removal would result in exceptional and extremely unusual hardship" to a qualifying relative—here, the petitioners' two U.S. citizen children. 8 U.S.C. § 1229b(b)(1)(D). "Exceptional and extremely unusual hardship" requires a showing of hardship to a qualifying relative that is "substantially beyond the ordinary hardship that would be expected when a close family member leaves this country."[2] *In re Monreal-Aguinaga*, 23 I. & N. Dec. 56, 62 (B.I.A. 2001); *see also Toalombo Yanez*, 140 F.4th at 45. Relevant factors include "the ages, health, and circumstances" of the qualifying relatives. *In re Monreal-Aguinaga*, 23 I. & N. Dec. at 63. A "strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school." *Id.* But "[a] lower standard of living or adverse country conditions in the country of return . . . generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship." *Id.* at 63–64. The factfinder should

[2] The petitioners argue that the agency should have relied on precedent related to suspension of deportation to interpret the "exceptional and extremely unusual hardship" requirement. That argument is meritless: suspension of deportation is a different form of relief with different standards, requiring a showing of "extreme hardship" and allowing consideration of hardship to the applicant. *See In re Monreal-Aguinaga*, 23 I. & N. Dec. at 61–62; *In re O-J-O-*, 21 I. & N. Dec. 381, 382–83 (B.I.A. 1996).

assess "all hardship factors . . . in the aggregate." *Id.* at 64.

The agency did not clearly err in concluding that the petitioners did not establish the required hardship. The agency accurately stated the legal standards and considered the evidence regarding the children's ages, health, and language skills; the availability of work, medical care, education, and family support in Ecuador; and the family's financial resources. The agency reasonably concluded that the aggregate harm to the children would not be exceptional and extremely unusual after finding that the children have no serious health problems or special educational needs, they speak fluent Spanish, and their parents had the skills and resources to provide for them if they followed their parents to Ecuador. *See id*. at 63–64.

The petitioners principally argue that the agency overlooked evidence establishing that their son has a serious liver condition. Pomavilla Falcon testified that her son's liver condition limits his activities and may require surgery, and that he takes vitamins, follows a special diet, and is monitored by a specialist. The agency considered this testimony, and the weight the agency assigned to it is a factual matter beyond our review. *See Penaranda Arevalo*, 130 F.4th at 340. As the agency noted, the condition was not corroborated with a letter from the specialist, and a letter from the child's pediatrician did not mention a liver problem, despite mentioning treatment by a specialist for eczema. And the record does not suggest that the IJ overlooked material evidence. "[W]e presume that an IJ has taken into account all of the evidence before him, unless the record compellingly suggests otherwise." *Xiao Ji Chen v. U.S. Dep't of Just.*, 471 F.3d 315, 336 n.17 (2d Cir. 2006). There is no indication that the IJ overlooked the examination notes because the IJ stated that he considered all evidence in the record, the examination notes were discussed during the hearing, and it is not clear from the notes that the petitioners' son was diagnosed with a liver condition (as opposed to being monitored for the development of one),

much less one that was serious or required treatment. *Cf. Toalombo Yanez*, 140 F.4th at 45 (rejecting argument that IJ mischaracterized a medical condition where doctor's letter did not indicate the severity of the condition). We likewise see no indication that the agency overlooked evidence regarding the severity of the petitioners' son's eczema. *See Xiao Ji Chen*, 471 F.3d at 336 n.17.

The petitioners also argue that the IJ overlooked evidence of violent and dangerous conditions in Ecuador. However, the record does not contain evidence suggesting that these conditions might cause sufficiently severe hardship to require further discussion in the IJ's decision. *See Toalombo Yanez*, 140 F.4th at 46 (finding applicant had not shown hardships "substantially different from those that would normally be expected upon removal to a less developed country" where the record reflected "that Ecuador may be more dangerous than the United States and that the standard of living . . . may be lower"). That is particularly the case here because the petitioners sent their son to visit family in Ecuador for a month, and they did not testify that the children were at risk of being victims of crimes.

The petitioners argue that the IJ also overlooked other documents; however, as the Government points out, this argument is unexhausted because they did not raise it before the BIA. *See Vera Punin v. Garland*, 108 F.4th 114, 124 (2d Cir. 2024) ("[W]hen an argument made to this Court cannot be closely matched up with a specific argument made to the BIA, it has not been properly exhausted and we cannot hear it."). In any event, some of these documents (related to the petitioner's son's language development) were expressly considered, and the remaining documents did not require further discussion under the circumstances—for example, the petitioners complain that the IJ did not consider their daughter's medical records, but they do not assert that she suffers from health problems.

The thrust of the petitioners' remaining arguments is that the IJ should have given additional weight to Pomavilla Falcon's testimony about the difficulty she expects to face in finding work and providing for her children's basic needs, including her uncorroborated testimony that she would not be allowed to drive or open a business in Ecuador without three years of training. But, as noted above, the weight given to testimony is a factual matter that we lack jurisdiction to review. *Penaranda Arevalo*, 130 F.4th at 340.

For the foregoing reasons, the petition for review is DENIED. Petitioners' pending motion for a stay is DENIED as moot.

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