



PROGRAM MATERIALS

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Extreme Hardship in Immigration Cases: Integrating Psychosocial Evaluations with Legal Strategy

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**Extreme Hardship in
Immigration Cases:
Integrating Psychosocial Evaluations
with Legal Strategy**

I. PURPOSE AND GOALS

Purpose & Goal of Seminar

- Overview of extreme hardship criteria and clinical forensic challenges
- To know and anticipate the factors of denials in Waiver and Cancellation of Removal cases

Book Recommendation

Handbook of Mitigation in Criminal and Immigration Forensics: Humanizing the Client Towards a Better Legal Outcome.

7th Edition (2021)

Psychosocial Evaluations and Consultation in Civil Litigation: Strategies to Understand and Humanize the Client (2021)

**PSYCHOSOCIAL
EVALUATIONS AND
CONSULTATION IN
CIVIL LITIGATION:**

*Strategies to Understand
and Humanize the Client*

MARK S. SILVER

M.A., L.C.S.W., Ph.D., J.D.

Handbook of Mitigation in Criminal and Immigration Forensics

Humanizing the Client
Towards a Better Legal
Outcome

SEVENTH EDITION

MARK S. SILVER
M.A., LCSW, PhD, JD.

Free Case Sample

- **For a free case sample send an email to: marksilver1@cs.com**
- **Write the words “waiversample” in the subject line to weed out spam and provide your full information**

Types of Cases

- VAWA
- Deportation / Removal
- Waivers
- Asylum (1 year bar)
- U Visas
- Detention / Bond Hearings
- Adam Walsh Act
- Criminal Mitigation in Immigration Cases

What I Consider as a Forensic Evaluator

- What is the nature of the problem, how serious is it?
- Who must be included and why?
- Will the petition be evaluated based on the hardship? Perhaps the real problem is lack of mitigation
- What is the standard: Extreme hardship vs. extreme and exceptional unusual hardship
- Audience / Adjudicator – IJ or USCIS or TA
- Counterintuitive and inconsistent application ->

Confusion for respondents and applicants

- Complement / balance my work with lawyer
- Disabuse the other party of biases, prejudices, and assumptions -> don't leave the person guessing

II. HARDSHIP CRITERIA

Parental History Hardships

- Hardships in parent's history as prologue to child's hardships upon relocation, especially when conditions have changed very little

Case example: absence of electricity meant nebulizer could not be used, which led to respiratory death due to asthma

- Parental care quality issues

Case example: stigmatized single parent unable to cope alone

Loco Parentis

- uneducated parents find it extremely hard to guide their children in the context of their academic or developmental needs and cannot adequately advocate for them so they rely on the specialized training of educators to support their children in various aspects of their lives
- these services act in *loco parentis* substituting for the parents in a manner that not only provides for the children's needs but also evaluates such needs on an ongoing basis to ensure that the children are where they are supposed to be with regards to their development and education

Particularity of Relationship

- Particularity of Relationship (“deport his sorry ass out of here”)
- Marriage is Family (“when will you start a family”)
- Gay Marriages (bias in country of origin)
- Elderly Parents are Dependents: assumption that children need their parents regardless of age, but elderly parents do not need their children because they are adults and thus independent

Separation Hardships

- Inevitable and perhaps permanent separation
- Especially with children of varied ages
- Intergenerational care
- Half of all US families are blended
- Quality of Maternal / Paternal care if alone
- Separation in foreign country because of hardships regarding job, school, etc

Medical Hardships: 6 Steps

- Diagnoses – all major and minor medical and physical issues should be included, and any other healthcare considerations, OT, PT, Speech Therapy, Chiropractor
- Symptoms – detailed symptomatology and not just major criterion of the pathology
- History – should include emergency room and clinic visits, and acute and chronic issues small and large
- Treatment – all prescriptions, treatments, and secondary aids
- Recommendations – all best medical practices should be included
- Prognosis – what could occur if the child's parent is forced to leave the United States and / or if the child is forced to reside in the parent's country of origin

Healthcare Hardships

- Undocumented or Non-Medical Issues (eg, obesity)
- Physical limitations (ADLs)
- Country of origin illnesses due to heat, insects, unclean water, etc
- Illnesses of family in country of origin and treatments
- Availability of medical care / healthcare insurance (vs. fake medicines)
- Access / distance to healthcare

Education

- Honor student
- Learning Disabilities (eg, math, reading)
- Intellectual Disability
- Special Education / Program, eg, charter schools
- Cost of education
- Extracurricular activities
- Proximity to school / lack of school programs
- May abandon education due to cost or the need to work or bc education leads no where
- Report cards and related documentation

IEP

- An Individualized Education Plan (IEP) is mandated by the Individuals with Disabilities Education Act (IDEA), which requires public schools to develop an IEP for every student with a disability who is found to meet the federal and state requirements for special education.
- If the child does not have an IEP, but the parent or evaluator suspects that the child may have a learning disability an IEP can be prepared as early as possible so such referrals can be made with adequate time to gather supporting documentation
- Advocate very early

Language Hardships

- Bilingual issues
- Non-national languages
- Bilingual school programs
- Employment issues
- Cost of school
- Give-away as foreigner -> isolation / danger

Safety

- As a foreigner
- Travel
- Crime
- Drugs
- Violence
- Kidnapping
- School attendance / Community accessibility
- Police / government corruption and ineptitude

Community Hardships

- Lack of community access / contact in foreign country
- Extended family support
- Familiarity / certainty: children require a structured, stable, and predictable environment and community in which to grow and feel safe and secure
- Concrete Supports
- Safety
- Socialization
- Community as therapeutic

Case example: parental suicide / child adjustment

Cultural Hardships

- Culture
- Religion
- Language
- Dress
- Expectations / values / limitations

Case example: Just b/c child's parents are from that culture doesn't mean that the child likes that culture

Female Hardships

Females are second-class citizens:

- Sexual assault / misogyny
- Education
- Employment
- Community
- Legal
- Social
- Dress
- No police help / No social services supports

Financial Hardships

- Income
- Advantage of two incomes
- Car payments
- Cost of childcare / homecare
- Home mortgage
- School / college tuition
- Cost of flying back and forth
- Poverty: no jobs, poor economy, low wages

Special Abilities / Opportunities

- Sports / athletics

Case example: child whose grades soared with wrestling team

- Education
- Religion / temple as community
- Family
- Therapy support

Adolescent Issues

- **Sexual identity Issues**

Psychiatric Hardships

- Based on the client's psychosocial history
- Trauma very common w immigrants
- Be explicit:

PTSD (from country of origin)

Separation Anxiety

LD

Depression / Suicidality

Panic Attacks

Drugs

Separation hardships

III. HARDSHIP CHALLENGES

Multiple Meetings

- Document three meetings (for waivers)
- Is this a requirement? (no, by research)
- Diminishing returns
- Clients refuse to comeback or they are inaccessible
- Strategies to have clients return

Include All Family Members

- Multiple sources of information
 - Country visits / Nationwide visits
- (Case example: Aruba)

Two Hardships (maybe 3)

Hardships upon separation AND hardships in foreign country

Case example: no hardships here, only hardships there b/c alcoholic household.

Third Hardship? ie, hardships for non-qualifying family members

Case example: quality of maternal care

THIS MUST BE EXPLICITLY STATED FOR IMMIGRATION COURT SO THAT THE JUDGE UNDERSTANDS THAT ALTHOUGH THE EVALUATOR IS NOT A COUNTRY CONDITION EXPERT HIS MANDATE IS TO EVALUATE BOTH HARDSHIPS SCENARIOS

Expert's Purpose

The following report is a forensic psychosocial psychiatric social work evaluation for immigration purposes to determine:

- (1) the extreme hardships that Kim will suffer if Sharon, her mother, is deported to Mexico and
- (2) the extreme hardships that Kim will suffer if she must reside in Mexico with her mother.
- This evaluator does not claim to be a country condition expert, however, a crucial part of the evaluation concerns the quality of life and extreme hardship considerations that the qualifying family member(s) will experience outside of the United States. As such, both hardships will be considered.
- Moreover, healthcare and other considerations for nonqualifying family members are considered when they exist as an extension of the hardship for the qualifying family member.

Psychotherapist vs. Forensic Evaluator

- A systemic analysis is required not just mental health issues
- The forensic evaluator knows what to look for
- Therapist may only contribute progress notes rather than a detailed summary including diagnosis
- Many therapists are frightened to write forensic reports or just don't know how or won't because they're not being paid and therefore write a less than satisfactory report
- Submitting therapist notes alone misleads the USCIS evaluators into believing that this should be the standard
- There is no evidence that a therapist is better than a forensic evaluator (USCIS research) in ultimate decision
- There may be no mental health issues

No Mental Health Diagnoses

- Broad mental health issues
- Sub-clinical / Atypical Issues
- Undocumented issues by history
- Mental health support in church / temple

Case Example: Religious Christians from West Indies.

Failure to Seek Mental Health Assistance

- Ignorance
- Shame
- Lack of financial resources
- Fear of authority or government workers
- It may be the first time that the client has spoken about his or her experiences
- Anathema / Stigma

Goal of the Evaluation

- Humanize client through a sympathetic broad psychosocial evaluation to induce empathy
- Document client's life history: illustrate client's community, educational, employment ties
- Professional expression can replace self-expression
- Single document theory

Cumulative Factors

- Should be stated
- Interweave material
- Totality of evidence / Aggregate / cumulative
(Case example: “this case won’t win”)

Include Research on Hardships

- Country of origin hardships
- Hardships separation research
- Psych / medical research

(Case example: the 2 diabetes)

Purpose and Credentials

- Clearly state CV or Summary
- Contacts / Manner of Contact
- Reason
- Information

Expert's Role in Immigration Court

- SEPARATE CLE
- Two judges theory of practice
- Beware of stipulations
- Nothing replaces live testimony
- EXPERTS ARE RARELY APPEALED (according to inside former TA from 26 Federal Plaza in NYC)

Mitigate Illegal Behavior

- SEPARATE CLE (bond hearings, crimes, CIMTs, fraud and misrepresentation)
- Remorse and Regret due to error in judgment
- Aberrant decision / misguided behavior
- Foolish conduct / unthinking moment
- Diminished capacity
- Life stressors
- Poor judgment, but not evil, ie, not bad, no animus
- May overshadow hardship analysis

What To Do When You Get a Denial

- There are two kinds of lawyers those who get denials and lawyers who get denials but won't admit that they get denials
- Start fresh (de novo) ie, take advantage of the opportunity
- Review forensics and go back to the evaluator
- It's not free!
- Second bite at the apple? perhaps.... not so sure
- try to read between the lines and consider what is not in the denial or only mentioned in passing
- USCIS/IJ substitutes his opinion for the parent or expert's opinion on the child's best interest

THANK YOU !