

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 4, 2026

Christopher M. Wolpert
Clerk of Court

JULIO CESAR HERNANDEZ
HERNANDEZ,

Petitioner,

v.

TODD BLANCHE*, United States
Attorney General,

Respondent.

No. 25-9561
(Petition for Review)

ORDER AND JUDGMENT*

Before **HARTZ**, **BACHARACH**, and **EID**, Circuit Judges.

Julio Cesar Hernandez Hernandez petitions the court under 8 U.S.C. § 1252 to review the denial by the Board of Immigration Appeals (BIA) of his application for cancellation of removal under 8 U.S.C. § 1229b(b). We deny his petition.

* Todd Blanche is now the Attorney General of the United States and has been substituted as Respondent. *See* Fed. R. App. P. 43(c)(2).

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I.

Mr. Hernandez is a native and citizen of Mexico who has lived in the United States since 2000. The Department of Homeland Security (DHS) initiated removal proceedings against him in 2019. Mr. Hernandez conceded that he is subject to removal but applied for cancellation of removal on the ground that it would cause “exceptional and extremely unusual hardship” to his minor son, who is a United States citizen. 8 U.S.C. § 1229b(b)(1)(D).¹ An immigration judge (IJ) denied Mr. Hernandez’s application, and the BIA affirmed that decision.

II.

Because the BIA affirmed the IJ’s decision without an opinion, we review the IJ’s decision as the final order of removal. *See Uanreroro v. Gonzales*, 443 F.3d 1197, 1203 (10th Cir. 2006); 8 C.F.R. § 1003.1(e)(4)(ii). “[W]e review any valid constitutional claims or questions of law de novo.” *Martinez v. Garland*, 98 F.4th 1018, 1021 (10th Cir. 2024) (internal quotation marks omitted). We review the IJ’s application of § 1229b(b)(1)(D)’s “exceptional and extremely unusual hardship” standard to the facts of Mr. Hernandez’s case as a mixed question of law and fact. *See Wilkinson v. Garland*, 601 U.S. 209, 221 (2024). Because that determination is “‘primarily factual, [our] review is deferential.’” *Martinez*, 98 F.4th at 1021 (quoting *Wilkinson*, 601 U.S. at 225). And while we review the application of the statutory standard to the facts, “§ 1252(a)(2)’s jurisdiction-stripping provisions . . .

¹ Mr. Hernandez also applied for other forms of relief but no longer pursues them.

exclude agency fact-finding from review.” *Wilkinson*, 601 U.S. at 225 (internal quotation marks omitted). “The facts underlying any determination on cancellation of removal therefore remain unreviewable.” *Id.*

III.

A.

A noncitizen who applies for cancellation of removal must first show he satisfies the four eligibility criteria set out in § 1229b(b)(1)(A)–(D). *See Wilkinson*, 601 U.S. at 212. If the applicant shows he is eligible for cancellation, then the IJ adjudicating his application “decides whether to exercise his discretion favorably and grant the noncitizen relief in the particular case.” *Id.* at 212–13. The only issue here is whether Mr. Hernandez satisfied the fourth eligibility requirement by establishing that his “removal would result in exceptional and extremely unusual hardship” to his son, who is a qualifying U.S.-citizen family member under § 1229b(b)(1)(D).

“As interpreted by the BIA, the application of the ‘exceptional and extremely unusual hardship’ standard requires an IJ to evaluate a number of factors in determining whether any hardship to a U.S.-citizen . . . family member is substantially different from, or beyond, that which would normally be expected from the deportation’ of a ‘close family member.’” *Wilkinson*, 601 U.S. at 222 (brackets omitted) (quoting *Matter of Monreal-Aguinaga*, 23 I. & N. Dec. 56, 65 (B.I.A. 2001)). Relevant factors include “the ages, health, and circumstances of qualifying . . . United States citizen relatives.” *Monreal*, 23 I. & N. Dec. at 63. “For example, . . . an applicant whose child has ‘very serious health issues, or compelling special

needs in school[,]' might qualify.” *Martinez*, 98 F.4th at 1021 (quoting *Monreal*, 23 I. & N. Dec. at 63).

“[A]ll hardship factors should be considered in the aggregate,” *Monreal*, 23 I. & N. Dec. at 64, and each case “must be considered on its own individual facts,” *Matter of Andazola-Rivas*, 23 I. & N. Dec. 319, 323 (B.I.A. 2002). “But economic detriment and diminished educational opportunities” alone do not make an applicant eligible for cancellation. *Martinez*, 98 F.4th at 1021. The applicant has the burden to prove he is eligible for relief. *See Wilkinson*, 601 U.S. at 213.

B.

As found by the IJ, Mr. Hernandez’s son, who was born in 2008, has lived with his mother since she and Mr. Hernandez divorced in 2011. His mother is remarried and lives with her current spouse and their two other children.²

Mr. Hernandez sees his son regularly and the two have a close relationship. Mr. Hernandez has consistently paid monthly child support and provides additional financial assistance for his son when needed. His son has attention deficit hyperactivity disorder (ADHD) and anxiety. He has received therapy for these conditions, paid for by his mother and step-father’s insurance, but the therapy is infrequent because his conditions are well managed. In 2021 he began attending a school that “uses a military model to help students maintain discipline,” and has benefitted from its structure and smaller class sizes. *R.*, vol. 1 at 31. The school is a

² We state the facts as presented at the time of the hearing before the IJ, held on March 24, 2021.

public charter school but has a \$350 annual fee. Mr. Hernandez’s financial support could help pay that fee and has also facilitated his son’s participation in several extracurricular activities that have helped him manage his ADHD and anxiety.

If Mr. Hernandez is removed, his son would remain in the United States with his mother. His parents, who both testified before the IJ, believe their son would be “devastated” by this separation from his father, and that Mr. Hernandez’s removal would create “a financial and emotional disruption” and worsen his son’s ADHD and anxiety symptoms. *Id.*

C.

After reviewing the governing legal standards, the IJ concluded that Mr. Hernandez had not shown that the hardship to his son that his removal would cause rises to the level of being “exceptional and extremely unusual” under § 1229b(b)(1)(D). Reviewing that determination deferentially, *see Martinez*, 98 F.4th at 1021, we find no reason to set it aside.

The IJ observed that because Mr. Hernandez’s son lives with his mother, step-father, and step-siblings, “[h]e has a family here” in the United States that would continue to support him if Mr. Hernandez is removed. *R.*, vol. 1 at 34. Given fewer economic opportunities in Mexico, the IJ recognized that Mr. Hernandez’s removal could make it harder for him to pay financial support, and so “may limit some of [his son’s] extracurricular activities that have helped him manage his ADHD and anxiety.” *Id.* But the IJ reasoned that the hardships would be mitigated by his son’s

continued access to therapy, covered by his mother's insurance, and observed that his school had "significantly helped" in managing his ADHD and anxiety. *Id.*

The IJ recognized that Mr. Hernandez has "a close bond" with his son, so that removal would cause emotional hardship, and found their situation "deserving of sympathy." *Id.* at 33. Nevertheless, the IJ concluded Mr. Hernandez's removal would present the same types of financial and emotional hardships that are "not uncommon when a family member is removed from the United States." *Id.* at 33. Therefore, "[c]onsidering all the factors together in the aggregate," the IJ ruled that Mr. Hernandez had not shown that these hardships would be "exceptional and extremely unusual." *Id.* at 34.

We see no basis to set aside the IJ's ruling. On the unreviewable facts presented, we agree with the agency that while Mr. Hernandez's removal will cause hardships for his son, he has not shown those would be "substantially different from, or beyond," those that are "normally" expected when a parent is separated from a child by removal from the country. *Martinez*, 98 F.4th at 1021 (internal quotation marks omitted).

Mr. Hernandez's arguments challenging the decision are unavailing. He asserts that the IJ "mischaracterized the facts" and that his "findings conflict with evidence in the record." Pet'r Opening Br. at 13. But we do not have jurisdiction to review the IJ's fact-finding. *See Wilkinson*, 601 U.S. at 225.

Mr. Hernandez also points out that the IJ found his and his ex-wife's testimony credible. But that credibility finding does not mean the facts they presented were

enough to show he is eligible for relief. *See Garland v. Ming Dai*, 593 U.S. 357, 371 (2021) (“[E]ven if the BIA treats an alien’s evidence as credible, the agency need not find his evidence . . . sufficient to meet the burden of proof.”).

Beyond that, Mr. Hernandez argues the IJ overlooked or failed to address various record evidence. For instance, he contends the IJ did not account for evidence that his son suffered when he was temporarily separated from Mr. Hernandez following a move from New York to Utah; that his son “develops ties when his circumstances get in the way of his ‘rituals,’” Pet’r Opening Br. at 13; that he was once “recommended [for] special accommodations at his school,” *id.* at 14; and that country conditions in Mexico “would make it impossible for [Mr. Hernandez] to find meaningful employment to support his son,” *id.* at 15.

Even if we overlook Mr. Hernandez’s failure to provide any record citations for the evidence he relies on, *see* Fed. R. App. P. 28(a)(8)(A), his arguments fall short. We will not set aside the IJ’s determination only because the written decision did not explicitly discuss all the evidence in the record. *See Hadjimehdigholi v. I.N.S.*, 49 F.3d 642, 648 n.2 (10th Cir. 1995) (“[T]he BIA is not required to discuss every piece of evidence when it renders a decision. . . . [A]ll that is necessary is a decision that sets out terms sufficient to enable us as a reviewing court to see that the Board has heard, considered, and decided.” (internal quotation marks omitted)); *see also Xiao Ji Chen v. U.S. Dep’t of Just.*, 471 F.3d 315, 337 n.17 (2d Cir. 2006) (“[W]e presume that an IJ has taken into account all of the evidence before him,

unless the record compellingly suggests otherwise.”). Rather, we conclude that the IJ’s decision fairly applied § 1229b(b)(1)(D) to the facts presented.

IV.

We deny Mr. Hernandez’s petition for review.

Entered for the Court

Harris L Hartz
Circuit Judge