Finding an Expert to Conduct the Immigration Hardship Psychological Evaluation

Mark D. Ackerman, Ph.D., Licensed Psychologist

Portions of this paper were presented as part of a presentation made by Dr. Ackerman at the American Psychology-Law Society annual conference on March 8th, 2013, in Portland, Oregon

Deportation and removal is the area of immigration law in which a psychological evaluation is most likely to be required. In an immigration removal case a non-permanent resident (NPR) must establish that his or her removal would cause “extreme and unusual hardship” to a qualifying relative (i.e. their U.S. citizen or legal permanent resident spouse, child or parent). When extreme psychological hardship is uncovered through a psychological evaluation, pending deportation may be cancelled by the court (“cancellation of removal”) and legal permanent residence granted (“green card”).

Another area of immigration law in which psychological evaluations are often used is in support of adjustment status or visa application when a waiver of overstay (or other inadmissibility problem) is necessary (e.g. I-601 Waiver). A well-drafted psychological report can persuade an immigration court that “extreme” psychological hardship to the applicant’s U.S. citizen spouse, child or parent will result if the application for legal admission to the United States is denied. The result can be a grant of legal permanent residence in the United States.

There are five other immigration-related uses of psychological assessment in immigration cases: political asylum, domestic abuse, proof of cognitive impairment in naturalization, obtaining grant of Deferred Action for Childhood Arrivals (DACA), U-Visa and T-Visa. Each benefit requires accurate assessment of psychological hardship factors. In the first category, applicants for political asylum are refugees who often have been exposed to political imprisonment, religious persecution, extreme deprivation, torture and various forms of psychological distress in their home country. They seek “asylum” or safety from their country of origin within the U.S. under the Immigration and Nationality Act (U.S. Code Section 208a). Quite frequently, these asylum applicants experience post-traumatic stress disorder (PTSD) or other emotional difficulties which make “telling their life story” difficult or impossible. The nature and extent of their psychological impairment can be established by a thorough psychological evaluation which should be conducted by a psychologist trained in detecting post-traumatic stress disorder (PTSD). The DSM-5 notes that the clinical expression of the symptoms of PTSD may vary culturally.

NPR victims of domestic abuse who are married to a U. S. citizen may be eligible for permanent residency in the U.S. if they can establish through a psychological evaluation that verbal, physical or sexual abuse has occurred within their relationship. The Violence Against Women Act (VAWA) provides for immigration benefits to men as well as women who have been physically and mentally abused by their U.S. citizen spouse.
The third category of assessment involves individuals claiming waiver from the U.S. citizenship examination due to cognitive deficits including such factors as dementia or learning disability. These individuals can be tested by the psychologist to determine if their claims are valid and to measure the extent of impairment.

A fourth category concerns the new “Dreamers” benefit called Deferred Action for Childhood Arrivals (DACA). This benefit is denied to any young person who has a serious criminal conviction like domestic violence unless rehabilitation is established. The psychological evaluation can help determine if the conviction may have been the result of a mental disorder, prior parental abuse, or other cognitive deficit. Finally, a U-Visa may be granted to an NPR living illegally in the U.S. if that individual is able to demonstrate, through a psychologist’s evaluation, that they have suffered substantial mental or physical abuse as a result of being a victim of a crime that occurred in the U.S. and that they were helpful to legal authorities (e.g. police, U.S. gov’t) in providing information that assists with prosecution of the crime. A special T-Visa is available for victims of human (sex) trafficking. In each case, a psychologist’s evaluation can be extremely helpful in highlighting the hardship issues pertaining to the case.

The immigration hardship psychological evaluation often starts with either a self-referral or a referral from an immigration attorney. Not all immigration attorneys are aware of the importance that a psychological evaluation of individual and family members can have on the final outcome of an immigration case. These evaluations are especially important if the case must be taken to appeal. Case studies have been documented to show that thorough psychological evaluations conducted by a psychologist (or other experienced mental health professional) knowledgeable about the factors involved in immigration hardship can make a huge difference in the outcome of the case at trial or on appeal.

**Psychological testing is the unique specialty skill of the psychologist that enables us to diagnose cognitive, emotional, behavioral and developmental disorders based on psychiatric nomenclature.** A DSM-5 diagnosis provided within the hardship report is often given strong consideration by immigration officials or the immigration court when making determination whether the requisite extreme hardship has been established.

What is included in a thorough psychological evaluation? At my office, the psychological evaluation is comprehensive and thorough. It consists of a review of pertinent documents, including medical and psychiatric records where indicated, review of personal and family history, mental status evaluation, children’s school records (where applicable) and psychological testing. Use of validated and reliable testing measures is important due to the need to objectively assess for mental and cognitive disorders which lends greater credibility to the findings. In my evaluations, I often include simple self-report measures that are well-validated and easily interpreted, including the Beck scales, Children’s Depression Inventory-II, Prime MD Evaluation of Mental Disorders, and the Trail Making Tests and Montreal Cognitive
Assessment Scale for culture-fair cognitive screening. In addition, the importance of a thorough clinical interview cannot be overstated as some measures are simply not appropriate for all examinees and in those cases I may utilize a free-response autobiographical narrative in which examinees simply report their life-story.

It is important for psychologists conducting these evaluations to maintain a culturally informed practice including awareness of and sensitivity to the varied customs and lifestyles which our clients bring to the evaluation. Many of the examinees at my office have come from different countries around the world. For example, over the past 3 years I have evaluated individuals and families from Mexico, Viet Nam, Republic of El Salvador, Guatemala, Republic of Cameroon, Venezuela, Israel, Honduras, India, Singapore, South Africa, Albania, United Kingdom, Peru, Brazil, Russia, Korea and Liberia. As a result of this diversity, the first step I take in preparing for a new evaluation often includes a review of the U.S. State Department Report on the client’s country of origin.

My final report includes a review of personal, family and background information, current status, careful detail of hardship factors relevant to the case at hand, results of mental status exam and psychological testing, provision of DSM-5 diagnostic categories where applicable, and summary and recommendations based on the findings. I have learned over the years of doing this work that many families are unaware that they are experiencing exceptional and unusual hardship, but through these evaluations, such difficulties can be uncovered and presented in a persuasive manner. Each evaluation however, is based on objective findings and I always explain to the family or couple I am working with that a recommendation to support cancellation of removal may not always be possible. In some cases the circumstances and findings simply do not rise to the level of extreme hardship. It is important to be honest with the evaluatee and their counsel about the limitations of the evaluation process.

In summary, questions to ask your psychologist (or other mental health provider) as a first step in considering hiring them to conduct your immigration hardship psychological examination should include the following:

“Are you licensed in your profession?”

“How many immigration hardship psychological evaluations have you performed over the past two years?”

“Do you know how to administer and interpret psychological tests?”

“What do you use to determine a diagnosis in your report?”

“Have you ever testified in immigration court concerning the results of your hardship evaluation?”
Dr. Mark Ackerman is a licensed psychologist with specialized training in forensic psychology and immigration hardship psychological evaluation. His office is located at:

3280 Howell Mill Road, Suite 217 East, Atlanta, GA 30033. Appointments may be scheduled by calling 770-396-2206 or accessing his website: clinicalforensicpsychsvs.com