

Finding an Expert to Conduct the Immigration Hardship Psychological Evaluation

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

Portions of this paper were presented as a part of 2 presentations made by Dr. Ackerman at the American Psychology -Law Society annual scientific sessions, March, 2013, Portland, OR and the American College of Forensic Psychology 35th annual symposium held in San Diego, CA, April, 2019.

Deportation or removal are decisions made by an immigration court that may be influenced by the results of a psychological evaluation. In an immigration removal or deportation case, a non-permanent resident (known as “undocumented”) must establish that his or her removal would cause “exceptional and extremely 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”). Psychological evaluations are often used in support of adjustment of 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 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 other uses of psychological evaluation within immigration proceedings: political asylum, domestic abuse, proof of cognitive impairment in naturalization (Form N-648) and U-Visa/T-Visa. Each of these requires accurate assessment of psychological hardship factors. Applicants for political asylum are refugees who have been exposed to political imprisonment, religious persecution, extreme deprivation, torture or 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). A thorough psychological evaluation can uncover and further clarify these factors. Sometimes asylum applicants experience post-traumatic stress disorder (PTSD) or other emotional difficulties. The nature and extent of their psychological impairment can be determined 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 thus cultural factors must be carefully considered within the context of conducting these evaluations.

Undocumented individuals living illegally in the U.S. who are victims of domestic abuse and 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 immigration benefits to both men and women who have been physically and/or mentally abused by their U.S. citizen spouse. Careful assessment of abuse factors and their consequences should therefore be examined through historical, observational and assessment measures when abuse is reported by an examinee.

An additional category of assessment concerns individuals claiming waiver from the U.S. citizenship examination due to cognitive deficits including such factors as dementia or learning disability. Individuals who claim such impairments to bypass the citizenship examination can be tested by the psychologist to determine if their claims are valid and to measure the extent of cognitive impairment followed by completion of Form N-648 by the evaluating psychologist. Finally, **U-Visa** may be granted to an undocumented individual living illegally in the U.S. if that individual is able to demonstrate, through a psychological 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) 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. A prior category

concerned the deferred action for childhood arrivals (DACA). This benefit is currently under review by congress, but in the past DACA had been denied to any young person who had a history of felony conviction. The psychological evaluation was used to help determine if the conviction may have been the result of a mental disorder, abuse, or other cognitive deficit.

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 completed by a psychologist or other mental health provider skilled in diagnosis and 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 a unique specialty skill of licensed psychologists that enables us to diagnose emotional, behavioral, cognitive and developmental disorders based on psychiatric nomenclature. A DSM-5 or ICD-10 diagnosis provided within the hardship report is often given strong consideration by immigration officials and/or the immigration court when making determination whether the requisite extreme hardship has been established.

What is included in a psychological hardship evaluation?

At my office the 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 both self-report and well-validated psychological tests. Psychological tests used in my practice combined with interview and observation are culturally fair, reliable and provide information concerning the examinee's psychological adjustment, personality and cognitive functioning.

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 seen at my office have come from different countries around the world. For example, over the past several years I have evaluated over 600 individuals and families from Mexico, Viet Nam, China, Republic of El Salvador, Guatemala, Republic of Cameroon, Venezuela, Israel, Ghana, Honduras, India, Italy, Singapore, South Africa, Albania, Japan, United Kingdom, Peru, Brazil, Russia, Korea, Ghana, Kenya, Liberia and others. As a result of this diversity, one of the first steps 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, work and other background information, current status, careful detail of hardship factors relevant to the case at hand, results of mental status exam and psychological testing, medical diagnoses, provision of DSM-5 or ICD-10 diagnostic categories where applicable, and summary and recommendations based on the findings. I have earned over the years of performing these evaluations that many families are unaware that they are experiencing extreme 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, as well as their referring immigration attorney, 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 examinee and their counsel about these factors so that all concerned have a good understanding of what to expect.

In summary, questions to ask your evaluating provider as a first step in considering hiring them to conduct your immigration hardship psychological examination should include the following:

“What are your professional credentials?” (e.g. psychologist, psychiatrist, counselor)

“Are you licensed in your profession?”

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

“What is your experience in administering and interpreting psychological tests?” “What do you use to determine a diagnosis in your report?”

“Have often have you testified in immigration court concerning the results of your hardship evaluation cases?”

Dr. Mark Ackerman is a licensed psychologist with specialized training in forensic psychology and immigration hardship psychological evaluation. His office is located at: 2751 Buford Highway, Suite 410 Atlanta, GA 30324.

Appointments may be scheduled by calling 770-396-2206 or accessing his website: ClinicalForensicPsychsvs.com