

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-3421

MARIA DOROTEO MARTINEZ;
LUCIO VALDEZ COLIMA,
Petitioners

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of an Order of the Board of Immigration Appeals
Immigration Judge Mary C. Lee, Nos. A206-070-918 & A206-070-923

Before: KRAUSE, PORTER, AND AMBRO, *Circuit Judges*
Submitted: Sept. 25, 2026; Filed: Oct. 8, 2026

NONPRECEDENTIAL OPINION*

AMBRO, *Circuit Judge*

Petitioners Maria Doroteo Martinez (“Martinez”) and Lucio Valdez Colima (“Colima” and, together with Martinez, the “Petitioners”) seek review of a decision by the Board of Immigration Appeals (the “BIA”) denying their motion to remand for further proceedings in connection with their son’s intervening autism diagnosis. The BIA denied their motion, in part, because Petitioners failed to show that the evidence was material to their applications for cancellation of removal. We deny their petition for review.

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

I. BACKGROUND

Martinez and Colima, both citizens of Mexico, entered the United States in 2004. They have three U.S. citizen children, including their son Giovanni. *Id.* In July 2016, the Department of Homeland Security served Petitioners with Notices to Appear (each, an “NTA”), charging them as removable for being present in the United States without admission. They admitted the factual allegations in their NTAs, conceded the charge of removability, and filed applications for cancellation of removal.

Three days prior to an October 2019 merits hearing before the Immigration Judge (“IJ”), the Petitioners scheduled a doctor’s appointment for Giovanni to “see whether we have [a] hardship condition [that] will develop” and warrant cancellation of their removal. A.R. 255. They then attended the merits hearing on October 18. There, Petitioners argued that Giovanni would suffer an “exceptional and extremely unusual hardship” if they were removed. A.R. 133, 181, 260-61; *see* 8 U.S.C.A. § 1229b(b)(1)(D). To that end, they testified that he was diagnosed with ADHD in May 2019 and takes Adderall to manage his condition. They also submitted a letter from Giovanni’s school saying that his grades had improved since receiving treatment. However, Petitioners did not introduce evidence demonstrating that similar ADHD treatments are unavailable in Mexico.

After the merits hearing concluded and the evidentiary record closed, Petitioners requested that the IJ withhold a decision on their applications until Giovanni could undergo further psychological testing at the doctor’s appointment they had scheduled for October

30. The IJ denied Petitioners' request because the record was already closed and it was "unclear when Giovanni w[ould] be evaluated." A.R. 127 n.2.

The IJ also denied Petitioners' applications for cancellation of removal, finding that they failed to demonstrate that removal would result in exceptional and extremely unusual hardship to Giovanni. Specifically, the IJ found no evidence that Adderall or a comparable alternative ADHD treatment would be unavailable in Mexico. The IJ also concluded that Giovanni's condition was not "severe," citing a letter from his school indicating that he was not struggling in classes. A.R. 134.

Petitioners timely appealed to the BIA. In April 2020, Giovanni was diagnosed with Autism Spectrum Disorder Level 1, requiring support without accompanying intellectual impairment and without accompanying language impairment. While their BIA appeal was pending, Petitioners moved to remand so they could introduce his autism diagnosis. In support of their motion, Petitioners submitted a comprehensive autism evaluation listing treatment recommendations, including participation in the "Amazing Kids Club" for children with autism, individualized education plan modifications, physical health care, and ongoing monitoring. A.R. 4, 112. Petitioners also submitted evidence of Giovanni's ongoing participation in the Amazing Kids Club.

In November 2025, the BIA adopted and affirmed the IJ's hardship determination, dismissed the appeal, and denied Petitioners' motion to remand. The BIA concluded that Petitioners failed to satisfy two independent requirements for their motion to remand: that

the information was not available and discoverable at the time of the merits hearing, and that evidence of his autism diagnosis would have materially affected the outcome.

First, the BIA concluded that Petitioners failed to establish that Giovanni's autism diagnosis could not have been presented at the merits hearing. According to the BIA, the diagnosis was arguably discoverable at an earlier date, and Petitioners should have explained why they waited until three days before the hearing to schedule the doctor's appointment that led to the autism diagnosis. Second, the BIA concluded that Petitioners failed to offer material supporting evidence likely to affect the denial of their application. The BIA found that Giovanni's autism diagnosis, much like his ADHD diagnosis, was "well understood and effectively managed." A.R. 5. Finally, the BIA concluded that Petitioners did not present sufficient supporting evidence that similar autism treatments were unavailable in Mexico.

Petitioners do not challenge the underlying hardship denial on appeal. They challenge only the denial of their motion to remand, contending that the BIA's availability and materiality analyses were erroneous.

II. JURISDICTION AND STANDARD OF REVIEW

The BIA had jurisdiction over Petitioners' appeal pursuant to 8 C.F.R. § 1003.1(b)(3). We have jurisdiction under 8 U.S.C. § 1252(a)(1), as the BIA's November 2025 decision constitutes a final order of removal. Venue lies in our Court because the IJ completed proceedings in Philadelphia, Pennsylvania. *Id.* § 1252(b)(2).

We review the agency’s denial of a motion to remand or reopen for abuse of discretion. *Pllumi v. Att’y Gen.*, 642 F.3d 155, 158 (3d Cir. 2011); *Sevoian v. Ashcroft*, 290 F.3d 166, 174–75 (3d Cir. 2002). And in doing so, we will not disturb the agency’s ruling unless it is “arbitrary, irrational, or contrary to law.” *Pllumi*, 642 F.3d at 158 (citation and internal quotation marks omitted).

III. DISCUSSION

To be statutorily eligible for cancellation of removal, applicants must show, among other things, that their “removal would result in exceptional and extremely unusual hardship to [their] spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.” 8 U.S.C. § 1229b(b)(1)(D). This standard “has long been understood to require a showing ‘substantially beyond the ordinary hardship that would be expected when a close family member leaves this country.’” *Wilkinson v. Att’y Gen.*, 131 F.4th 134, 142 (3d Cir. 2025) (quoting *In re Monreal-Aguinaga*, 23 I. & N. Dec. 56, 62 (BIA 2001)). While the hardship need not be “unconscionable,” relief is limited to “truly exceptional” situations. *Id.* (quoting *In re Monreal-Aguinaga*, 23 I. & N. Dec. at 62). Where the alleged hardship is based on a qualifying relative’s medical condition or special needs, an applicant must show that those needs cannot be met in the country of removal. *See, e.g., id.* at 143; *Matter of J-J-G-*, 27 I. & N. Dec. 808, 811–12 (BIA 2020).

A motion to remand is treated like a motion to reopen. *Huang v. Att’y Gen.*, 620 F.3d 372, 389 (3d Cir. 2010). Such a motion “shall not be granted unless it appears to the [BIA] that [1] evidence sought to be offered is material and [2] was not available and

could not have been discovered or presented at the former hearing.” 8 C.F.R. § 1003.2(c)(1). Petitioners fail at the materiality prong.¹

To establish materiality, a movant “must allege facts that ‘would be sufficient, if proved, to change the result’ of [the] application.” *Darby v. Att’y Gen.*, 1 F.4th 151, 160 (3d Cir. 2021) (quoting *Khan v. Att’y Gen.*, 691 F.3d 488, 496 (3d Cir. 2012)). “Materiality thus requires, at a minimum, that an applicant’s evidence . . . address[es] the deficiencies of the initial application.” *Id.* at 162. Thus, “[n]ew evidence that does not address the factual basis for the IJ’s denial of relief” is “not material.” *Id.* And the evidence that Petitioners submitted simply did not address the basis for the IJ’s denial.

The IJ denied cancellation of removal in part because Petitioners failed to demonstrate that Giovanni’s ADHD medication or comparable treatment would be unavailable in Mexico. The BIA reasonably concluded that Petitioners’ new autism evidence did not cure that deficiency. Petitioners argue that the absence of evidence about treatment availability supports remand because the newly diagnosed condition requires specialized treatment. But that argument turns the burden upside down. Petitioners were required to establish that the new evidence was material to their application for relief. 8 U.S.C. § 1229a(c)(4)(A); *Khan*, 691 F.3d at 496. And the absence of evidence that

¹ Petitioners vigorously contend that the BIA erred in its availability, discoverability, and presentability analyses. However, we need not address these matters because Petitioners have not satisfied the materiality prong.

Giovanny's autism could not be adequately treated in Mexico does not establish materiality. Instead, it confirms the evidentiary gap that supported the IJ's denial.

Additionally, the materials Petitioners submitted regarding conditions in Mexico do not change this analysis. The articles they offered did not demonstrate that sufficient education programs or autism-related services are unavailable in Mexico. At most, they suggested that the quality of medical care or educational services in Mexico may not be comparable to those available in the United States. But we have explained that a lower standard of living in the country of removal is generally insufficient to establish exceptional and extremely unusual hardship. *Wilkinson*, 131 F.4th at 143 (citing *In re Monreal-Aguinaga*, 23 I. & N. Dec. at 63–64). So too here.

Because Petitioners' new evidence did not address the central deficiency in their initial hardship showing, the BIA did not abuse its discretion in concluding that the evidence was not material.

* * * * *

For these reasons, the BIA acted within its discretion in denying remand. Petitioners' new evidence documented Giovanny's autism diagnosis and treatment recommendations, but it did not address the dispositive gap in their hardship showing: whether adequate comparable treatment or services would be unavailable in Mexico. Petitioners thus failed to establish materiality and, as a result, we deny their petition for review.