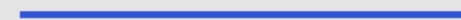
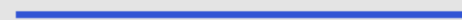
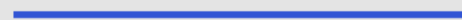
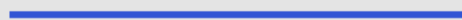




KEEPING FAMILIES TOGETHER: THE VITAL ROLE MENTAL HEALTH PROFESSIONALS PLAY IN IMMIGRATION CASES

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Immigration Related Proceedings

Many permit an advocate to present:

A. Written reports and evaluations B. Expert testimony

Regarding the hardship the non-citizen, or their qualifying family member(s) will suffer if the non-citizen is denied an immigration benefit, which results in family separation.

Poll Question #1

Have you ever testified in Immigration Court?

A. No

B. Yes

Reports

Reports may be directed to U.S Citizenship and Immigration Services (U.S.C.I.S.), or for use in immigration court proceedings.

Reports generally assess the hardship the qualifying relatives (Q.R) of a non-citizen applicant for an immigration "waiver" will suffer if denied that benefit, resulting in family separation.

Topics for Mental Health Professionals to Address in Immigration Court Proceedings

Competency

Ability or inability of the respondent to meaningfully participate in the proceedings; to understand those proceedings and to assist in their own defense. Necessity of safeguards, or termination. (See, Matter of M-A-M-, 25 I.&N. Dec. 474 (BIA 2011); Reid v. Bondi, 132 F.4th 109 (2d Cir. 2025))

Waivers

Waivers, including grant of cancellation of removal, based upon hardship to qualifying family member if waiver/benefit applied for, including adjustment of status, is denied.

Past Trauma and Mental Health Issues

Past trauma, or mental health issues, suffered by an applicant for an immigration benefit, e.g., history of sexual abuse; victim of D.V.; P.T.S.D.

Psycho-social Evaluations

Applicant's role and function in the family, and the likely impact on qualifying family members who are lawful permanent residents or U.S. citizens.

Who Is the Qualifying Family Member and what Hardship Standard Is Required to Be Shown?

Qualified Family Member

- **Ask respondent's attorney who the qualifying family member is. Usually it is a U.S. citizen, or lawful permanent resident: parent, spouse, or child.**

Hardship Standards

- **Ask what the hardship standard that needs to be shown if the applicant is denied the benefit: 'extreme hardship,' or 'exceptional and extremely unusual hardship.'**
 - **History of mental health issues, including prior diagnoses & treatment; history of therapy; medications, and/or mental health related hospitalizations.**
 - **Current mental health issues suffered by qualifying family members: symptoms, diagnosis & treatment**
 - **Role the non-citizen, applying for the benefit, plays in the life of the qualified relative (Q.R.) being evaluated**
 - **Best professional assessment of the likely impact on the Q.R. if applicant is deported**

Hardship Standard

Assess hardship in the alternative:

- **Hardship if Q.R. remains in U.S. without applicant?**
- **Hardship if Q.R. accompanies applicant to native country? Availability and quality of care in foreign country? Likely ability or inability of Q.R. to receive necessary services?**
- **Likely hardship if applicant is denied benefit, and Q.R. spouse — even a spouse without disability — remains in U.S. to care for Q.R. children or parents?**
- **Hardship to Q.R. if must accompany spouse, with children or parents, to applicant's home country?**
- **Mental health issues, disabilities, of Q.R.'s and likely impact on spouse's ability to work, care for children and parents.**

Some waivers only evaluate hardship to lawful permanent resident or US Citizen (parents or spouses), while other waivers include hardship to minor children in the hardship calculation.

Poll Question #2

Have you ever given a written report – testimony, on mental competency?

A. No

B. Yes

Preliminaries Relating to Submission of the Report

Written Assessment and Report

Must provide a written assessment and report — be aware of filing deadlines, whether with Court or U.S.C.I.S. — or may not consider.

Current C.V.

Will need to provide a current C.V.

Expert Qualification

If testifying, review what type of expert will be qualified as, and process.

Estimate Testimony Time

Estimate the approximate time needed for testimony.

Review with Attorney

Review with the attorney time needed vs. time available to testify.

Structuring the Report: With Emphasis on Court Evaluations

Format and Presentation

- Use subheadings, bullet points and italicization to highlight key points throughout the report

Records to Review

- Review the history of mental illness or disability in detail
- Prior admission and discharge summaries and treatment records
- Prior diagnoses — when did mental illness first manifest?
- Discussions with current therapists (if retained for report)
- Criminal complaints, supporting disposition, if applicable
- History of treatment and hospitalizations. Always point out pre-existing treatment history

Comprehensive Evaluation

- Include subsections evaluating each Q.R. (Qualified Relative) individually
- Assess overall impact on the family unit and hardship implications

Technical Language Clarification

- If using a technical or medical term, explain its meaning in common, accessible language
- Ensure judges and lay readers can understand the clinical context

Structuring the Report: With Emphasis on Court Evaluations Continued...

Symptom Description and Impact

- **If describing mental illness or disability, detail the symptoms and manifestations.**
- **Explain how the condition impacts the Q.R. and those around them.**
- **Provide concrete examples of functional limitations.**

Hardship Summary and Recommendation

- **Summarize findings relevant to hardship and provide a clear recommendation (e.g., grant waiver, cancellation of removal).**
- **Explain why the recommendation is appropriate to avoid 'X' level of hardship to the Q.R.**
- **Immigration judges face tremendous time pressures and may only skim reports 15–30 minutes before trial.**
- **Outline the hardship clearly and state the likely prognosis if denied.**
- **Describe the applicant's role in the family and to the particular Q.R.**
- **Explain how likely they are to be impacted if the application is denied.**
- **Ascertain through the attorney: Will the applicant be able to return if denied, or is this a one-time opportunity?**

Cancellation of Removal for Lawful Permanent Residents: Court Balances Positive vs. Negative Factors

Balancing Test for Deportation Cases

Where applicant faces deportation–removal due to criminal history, court will conduct a balancing test of positive and negative factors.

Prior Arrests and Dispositions

Be familiar with prior arrests and dispositions, when took place.

Rehabilitation as Key Factor

If criminal record, or history of drug or alcohol abuse, key factor is showing of rehabilitation: Judge needs to know unlikely to repeat.

Treatment Records and Compliance

Review prior & current treatment records. Negative toxicology screening results. Did person complete treatment? Complete probation?

Cancellation of Removal for Lawful Permanent Residents: Court Balances Positive vs. Negative Factors

Motivating Factors Behind Substance Use

**What factors may have motivated or contributed to use of controlled substances, or to driving while intoxicated?
For example, 'self medication' to treat underlying, undiagnosed, bipolar disorder, or depression.**

Evidence of Rehabilitation Progress

Do treatment records show rehabilitation? Did client complete program? Is client able to articulate insights gained from participation in therapy?

Current Danger Assessment and Rehabilitation

If appropriate, does evaluator believe, at present, that client is a danger to himself or to others, or does treatment, passage of time without further events, show rehabilitation?

Testifying Before Judges in Immigration Court

Understand Judge's Reputation

Try to find out, through attorney, what is judge's reputation? What can you expect during the hearing?

Summarize Key Findings

Summarize your key findings and why you are making a recommendation.

Assess Likely Outcomes

What is the likely outcome and what level of hardship, in your opinion, if client is denied cancellation of removal? What hardship to client, and to parent, spouse or children, if ordered deportation?

Monitor Judge's Intent

Is the judge truly trying to ascertain an unclear point, or is judge trying to conduct a cross examination to impeach and discredit you, the client, or testimony given.

Address Report Staleness

In immigration court, expert testimony is often given years after the report is prepared and submitted. Re-interview the qualified relative and applicant before hearing, to prevent report being found to be stale. Attorney may request a written update to previous findings: what is their current status?

Poll Question #3

Have you ever treated a spouse, parent or child, experiencing mental health crisis, attributable to, or exacerbated by, a close family members detention or deportation?

A. No

B. Yes

Articulate Impact on Family of Deportation Proceedings, in Clear Terms

Family Separation and Extended Custody

In many instances applicant will have been separated from family, and in ICE custody, for an extended period. How are family members, especially those who are Qualified Relatives, holding up under stress?

Impact on Children in School

Missed school or behavior problems

Children's Emotional Stability

Children's feelings of instability & fear, their need for stability.

Family Conflict and Mental Health

Conflict in the family?
Signs of depression?

Impact on Child Development

Child's ability to adapt, to develop, if they lose support from the applicant, given child's disabilities? Likely impact? Will disabilities magnify trauma of separation?

Suicide Risk

Threats of suicide, attempts, or suicide?
Impact on Q.R.'s?

Exceptional Hardship

Will hardship to Q.R.'s, be 'substantially beyond that which would normally be expected' upon deportation, i.e., exceptionally vulnerable?

Don't Be Intimidated!

Be Familiar with Records Reviewed

Become thoroughly familiar with all records reviewed and issues before court. Ensure the respondent's attorney explains what they hope to show with your testimony.

Review Your Report and Key Findings

Review your report, key findings, and their exact locations. If you need to refer to your report during testimony, request permission from the court to refresh your recollection.

Handle Judicial Hostility Professionally

If the judge appears hostile, attempts to interrupt, or tries to cut off your answer, politely state that you are still answering and would like to finish your response.

Request Video Testimony if Necessary

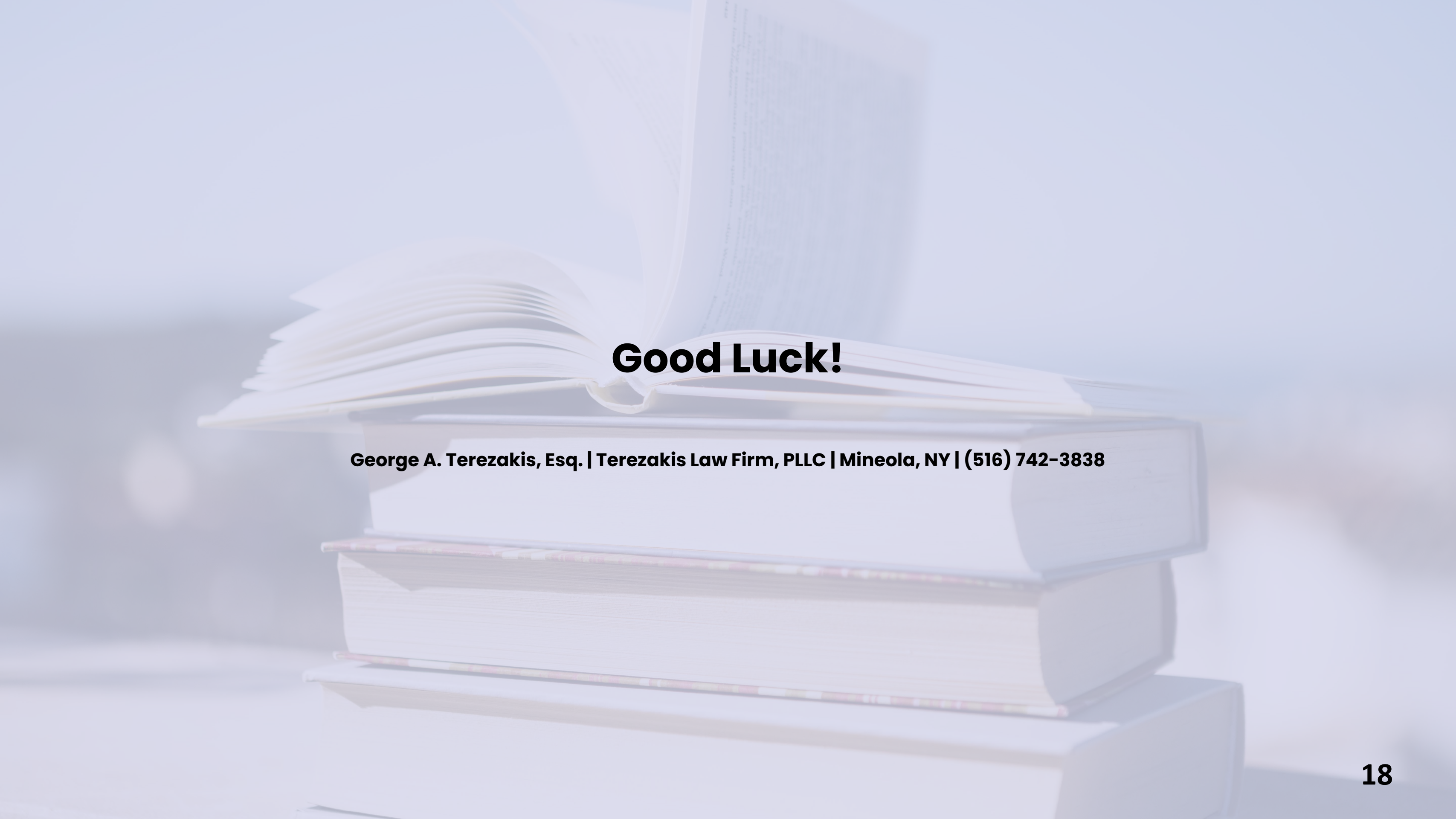
Ask your attorney to request video testimony in advance if you cannot appear in person at the hearing.

Understand Your Role as an Expert

Expert testimony is designed to help a fact finder better understand the issues before them and to provide a perspective informed by specialized knowledge. An honest, fair judge may simply want to clarify issues.

Prepare for Cross-Examination

Expect you will be subjected to cross-examination. You will be questioned and expected to defend and explain the basis for your findings. Do not let government attorney bait you into an imprudent response!



Good Luck!

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