

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Yupangui-Yunga v. Bondi

Yupangui-Yunga · No. 23-6522 · Decided October 24, 2025

SUMMARY

The Second Circuit denied Julio Cesar Yupangui-Yunga’s petition for review of the Board of Immigration Appeals’ denial of his motion to reopen removal proceedings. The court held that, under 8 U.S.C. § 1229b(b)(1)(D), a qualifying child must be under 21 years old when the cancellation-of-removal application is adjudicated, and therefore may age out while the application is pending. The court also held that exhaustion did not bar review because the BIA first raised the aging-out issue in its decision.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	William J. Nardini; Jacobs, Circuit Judge; Carney, Circuit Judge; Nardini, Circuit Judge
JURISDICTION	United States Court of Appeals for the Second Circuit
DECIDED	October 24, 2025
DOCKET	23-6522
DISPOSITION	denied
PROCEDURAL POSTURE	Petition for review of the Board of Immigration Appeals' denial of a motion to reopen removal proceedings.
STANDARD OF REVIEW	Questions of law under 8 U.S.C. § 1252(a)(2)(D), including statutory interpretation, are reviewed de novo. Legal conclusions on a motion to reopen are reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Julio Cesar Yupangui-Yunga v. Pamela Bondi, United States Attorney General

TOPICS

- cancellation of removal
- removal proceedings
- statutory interpretation
- exhaustion of remedies
- appellate jurisdiction

PRACTICE AREAS

immigration law

administrative law

appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether exhaustion barred Yupangui-Yunga from challenging the BIA's determination that his eldest daughter had aged out of qualifying-child status when the BIA first raised that issue in its decision denying reopening.
2. Whether 8 U.S.C. § 1229b(b)(1)(D) requires a qualifying child to be under 21 when the cancellation-of-removal application is adjudicated.
3. Whether alleged agency delay required the BIA or the court to fix the child's age at an earlier point in the cancellation-of-removal proceedings.

HOLDINGS

1. The exhaustion requirement did not bar judicial review because the BIA raised the aging-out issue sua sponte for the first time in its decision denying the motion to reopen.
2. Section 1229b(b)(1)(D) requires a qualifying child to be under 21 at the time the application for cancellation of removal is adjudicated. A child who turns 21 during the pendency of the application is no longer a qualifying relative for purposes of the hardship requirement.
3. Although the court independently interpreted the statute without Chevron deference, alleged agency delay did not authorize an earlier age date or an equitable exception to the statutory eligibility requirement.

KEY QUOTATIONS

"We hold that § 1229b(b)(1)(D) requires a qualifying "child" to be under the age of 21 at the time an application for cancellation of removal is adjudicated." (3-4)

"Under 8 U.S.C. § 1229b(b)(1)(D), a qualifying "child" must be under the age of 21 at the time an application for cancellation of removal is adjudicated." (25)

FACTUAL BACKGROUND

Yupangui-Yunga, an Ecuadorian national who had lived continuously in the United States since 1997, was placed in removal proceedings after multiple driving-related convictions. He applied for cancellation of removal under 8 U.S.C. § 1229b(b), asserting that removal would cause exceptional and extremely unusual hardship to his three United States-citizen children. After the BIA affirmed the denial of relief, he moved to reopen based on a psychological evaluation of his eldest daughter, who was under 21 when the motion was filed but turned 21 while the motion was pending.

PROCEDURAL HISTORY

The immigration judge denied Yupangui-Yunga's application for cancellation of removal and ordered him removed to Ecuador. The BIA affirmed, finding that he had not shown exceptional and extremely unusual

hardship to qualifying relatives. Yupangui-Yunga later moved to reopen based on new psychological evidence concerning his eldest daughter, but the BIA denied the motion after determining that she had turned 21 while the motion was pending and was no longer a qualifying child. The Second Circuit denied the petition for review.

DISPOSITION

denied

CASES CITED

- Toalombo Yanez v. Bondi, 140 F.4th 35, 39 (2d Cir. 2025)
- Santos-Zacaria v. Garland, 598 U.S. 411, 430-31 (2023)
- Mata v. Lynch, 576 U.S. 143, 147 (2015)
- Garcia Pinach v. Bondi, 147 F.4th 117, 127 (2d Cir. 2025)
- Naizhu Jiang v. Garland, 18 F.4th 730, 734 (2d Cir. 2021)
- Matter of Isidro-Zamorano, 25 I. & N. Dec. 829, 830-32 (B.I.A. 2012)
- Cruz v. Garland, 2024 WL 1460131, at *1-2 (2d Cir. Apr. 4, 2024) (summary order)
- Wisconsin Central Ltd. v. United States, 585 U.S. 274, 277-78 (2018)
- Nielsen v. Preap, 586 U.S. 392, 407-08 (2019)
- Rangel-Fuentes v. Bondi, No. 23-9511, 2025 WL 2750691, at *4 (10th Cir. Sept. 29, 2025)
- Diaz-Arellano v. U.S. Att'y Gen., 120 F.4th 722, 725-26 (11th Cir. 2024)
- Mendez-Garcia v. Lynch, 840 F.3d 655, 663-64 (9th Cir. 2016)
- Matter of Ortega-Cabrera, 23 I. & N. Dec. 793, 797-98 (B.I.A. 2005)
- Martinez-Perez v. Barr, 947 F.3d 1273, 1281-82 (10th Cir. 2020)
- INS v. Cardoza-Fonseca, 480 U.S. 421, 448 (1987)

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