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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROMALDO MARTINEZ; VICENTA
MARTINEZ, aka Vicentia Martinez,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-74098

Agency Nos. A075-708-002
A075-708-003

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Romaldo Martinez and Vicenta Martinez, husband and wife and natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo ineffective assistance of counsel claims.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Mohammed v. Gonzales, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review in part and dismiss it in part.

We agree with the BIA that petitioners' ineffective assistance of counsel claim fails because they did not establish that the alleged ineffective assistance may have affected their proceeding's outcome. *See Iturribarria v. INS*, 321 F.3d 889, 899-900 (9th Cir. 2003).

The evidence petitioners presented with their motion to reopen concerned the same basic hardship ground previously considered by the agency. We therefore lack jurisdiction to review the BIA's determination that the evidence would not alter its prior discretionary determination that petitioners failed to establish the requisite hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.