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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RICARDO FONTES BENAVIDEZ; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-72956

Agency Nos. A097-871-702
A097-871-703

MEMORANDUM*

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

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Ricardo Fontes Benavidez and his wife Olivia Pantoja Loza, natives and citizens of Mexico, petition pro se for review of the decision of the Board of Immigration Appeals denying their application for cancellation of removal based

* 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).

on their failure to establish exceptional and extremely unusual hardship to their qualifying relatives.

Petitioners contend that the BIA erred by failing to properly consider evidence of their United States citizen son's psychological treatment.

We lack jurisdiction to review the BIA's discretionary determination that petitioners failed to demonstrate the requisite hardship to their qualifying relatives.

See Martinez-Rosas v. Gonzales, 424 F.3d 926, 930 (9th Cir. 2005). We have jurisdiction to consider constitutional claims, *see Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004 (9th Cir. 2003), but petitioners have failed to raise a colorable constitutional claim. Contrary to the petitioners' assertion, the BIA did review evidence of their son's psychological treatment, and properly concluded that petitioners failed to present any evidence that their United States citizen son's condition would result in the requisite hardship.

Petitioners also contend that the BIA erred in not considering that petitioners' criminal offenses were treated as misdemeanors. The BIA, however, had no need to consider petitioners' prior convictions where the BIA relied on petitioners' dispositive failure to establish hardship in denying the cancellation application. *See INS v. Bagmasmad*, 429 U.S. 24, 25 (1976).

PETITION FOR REVIEW DISMISSED.