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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROBERTO MORALES GARCIA; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 05-77131

Agency Nos. A075-700-848
A075-700-849

MEMORANDUM*

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

Submitted July 6, 2009**
Pasadena, California

Before: FERNANDEZ and N.R. SMITH, Circuit Judges, and MILLS,*** District
Judge.

Roberto Morales Garcia and Mauricia Morales, natives and citizens of
Mexico, petition for review of the Order of the Board of Immigration Appeals

* 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).

*** The Honorable Richard Mills, Senior United States District Judge for
the Central District of Illinois, sitting by designation.

(BIA). The BIA denied their motion to reopen the underlying denial of their Application for Cancellation of Removal, based upon their failure to establish the requisite hardship to their United States citizen children.

In Petitioners' motion to reopen, they contend that their United States citizen children will suffer exceptional and extremely unusual hardship based upon a new psychological evaluation of their oldest daughter. Petitioners assert that, since the original hearing before the IJ, their daughter's mental health has worsened.

We review the denial of a motion to reopen for abuse of discretion, and we will only reverse if the agency's decision was "arbitrary, irrational, or contrary to law." *Valeriano v. Gonzales*, 474 F.3d 669, 672 (9th Cir. 2007). The BIA found that the evidence submitted with the motion to reopen concerned the same basic hardship grounds as their application for cancellation of removal. *See Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006). We agree. Therefore, we lack jurisdiction to review the BIA's discretionary determination that the evidence would not alter its prior discretionary determination that Petitioners failed to establish the requisite hardship. *See id.* at 600.

PETITION FOR REVIEW DISMISSED.