

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 14 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

EDUARDO MEDINA ESPINOZA;)
 CARMEN MEDINA,)
)
 Petitioners,)
)
 v.)
)
 ERIC H. HOLDER JR., Attorney)
 General,)
)
 Respondent.)
)
)
)
)
)
)

No. 05-76871

Agency Nos. A079-525-001
A079-524-977

MEMORANDUM*

Petition to Review 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.

*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. 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.

Eduardo Medina-Espinoza and Carmen Medina (“the Medinas”) petition for review of the Board of Immigration Appeals’ denial of their application for cancellation of removal and denial of their motion to reopen. We dismiss in part and deny in part.

(1) The Medinas’ petition for review of the denial of cancellation of removal⁴ was filed more than thirty days after the BIA’s decision and is, therefore, untimely. See 8 U.S.C. § 1252(b)(1). Thus, we dismiss for lack of jurisdiction. See Dela Cruz v. Mukasey, 532 F.3d 946, 948 (9th Cir. 2008) (per curiam); Membreno v. Gonzales, 425 F.3d 1227, 1229 (9th Cir. 2005) (en banc).

(2) The Medinas also petition for review of the BIA’s denial of their motion to reopen. See 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c). However, no new and material evidence was presented with that motion. Therefore, we deny the petition because the BIA did not err when it denied reopening. See Goel v. Gonzales, 490 F.3d 735, 738 (9th Cir. 2007) (per curiam); Bhasin v. Gonzales, 423 F.3d 977, 987 (9th Cir. 2005).

Petition DISMISSED in part and DENIED in part.

⁴8 U.S.C. § 1229b(b)(1).