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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ERASMO BAHENA; NOHEMI MARTINEZ-SANDOVAL,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 05-76318

Agency Nos. A092-375-180
A078-025-030

MEMORANDUM*

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

Submitted July 14, 2009**

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Erasmus Bahena and Nohemi Martinez-Sandoval, husband and wife and natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's ("IJ")

* 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).

decision denying Bahena’s application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence findings of fact, *Urzua Covarrubias v. Gonzales*, 487 F.3d 742, 744 (9th Cir. 2007), and we deny the petition for review.

After the BIA rendered its decision in this case, an en banc panel of this court concluded that the family unity waiver of inadmissibility under 8 U.S.C. § 1182(d)(11) is not available to aliens seeking to establish good moral character for the purposes of cancellation of removal. *See Sanchez v. Holder*, 560 F.3d 1028, 1032 (9th Cir. 2009) (en banc); *see also* 8 U.S.C. §§ 1229b(b)(1)(B), 1101(f)(3). Substantial evidence supports the IJ’s determination that Bahena was ineligible for cancellation of removal as an alien smuggler where he knowingly “provided some form of affirmative assistance to the illegally entering alien.” *Altamirano v. Gonzales*, 427 F.3d 586, 592 (9th Cir. 2005).

PETITION FOR REVIEW DENIED.