

AUG 17 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZHORA GRIGORYAN; RIMA
GRIGORYAN,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-73953

Agency Nos. A079-562-277
A079-562-278

MEMORANDUM*

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

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Zhora Grigoryan, and his wife, Rima Grigoryan, natives and citizens of Armenia, petition for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying their

* 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).

motion to reopen removal proceedings conducted in absentia. We dismiss in part and deny in part the petition for review.

We lack jurisdiction over petitioners' contention regarding the IJ's denial of their motion to reopen absent a hearing transcript because it was not exhausted before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (due process challenges that are procedural in nature must be exhausted).

Petitioners waived any challenge to the agency's conclusions regarding their ineffective assistance of counsel claim by failing to raise it in their opening brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir.1996) (issues not specifically raised and argued in a party's opening brief are waived).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.