

SEP 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YOUNG WHAN CHUNG; HO KYUN
CHUNG,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-70168

Agency Nos. A071-790-619

A071-790-622

MEMORANDUM*

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

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Young Whan Chung and his son, Ho Kyun Chung, natives and citizens of South Korea, petition for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's 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 for a continuance and denying their motion to remand. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion both the denial of a continuance, *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1246 (9th Cir. 2008) (per curiam), and the denial of a motion to remand, *de Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1023 (9th Cir. 2007). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying petitioners' motion to continue, because petitioners' eligibility for relief was speculative and not immediately available. *See Sandoval-Luna*, 526 F.3d at 1247.

The BIA did not abuse its discretion by denying petitioners' motion to remand because they failed to set forth a prima facie case for relief. *See Malhi v. INS*, 336 F.3d 989, 994 (9th Cir. 2003); *see also Shin v. Mukasey*, 547 F.3d 1019, 1025 (9th Cir. 2008).

We lack jurisdiction to consider petitioners' contention that they are eligible for a waiver, because this issue was not exhausted before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.