

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>AMADOU ABDOULAYE GAYE; AWA BA,</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. 06-75399

Agency Nos. A070-120-079
A029-227-986

MEMORANDUM*

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

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Amadou Abdoulaye Gaye and Awa Ba, husband and wife and natives and
citizens of Senegal, petition for review of the Board of Immigration Appeals'
("BIA") order dismissing their appeal from an immigration judge's ("IJ") decision

* 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).

denying their motion to continue and finding them deportable. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to continue, *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1246 (9th Cir. 2008) (per curiam), and we deny in part and grant in part the petition for review.

The agency did not abuse its discretion in denying petitioners' motion to continue where the IJ had previously granted a continuance, and petitioners' eligibility for a section 212(e) waiver was speculative. *See id.* at 1247 (denial of a motion to continue was not an abuse of discretion where proceedings had previously been continued and relief was not immediately available to petitioner). It follows that petitioners' due process claim fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error to prevail on a due process claim).

We grant the parties' request that this case should be remanded for the BIA to address petitioners' eligibility for voluntary departure.

PETITION FOR REVIEW DENIED in part; GRANTED in part; REMANDED. Each party shall bear their own costs for this petition for review.