

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEGUNDO MEDARDO RECALDE
CADENA; et. al,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-71202

Agency Nos. A096-344-349

A096-344-350

A096-344-351

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.

Segundo Medardo Recalde Cadena, his wife Flor Del Carmen Moreno

Condor, and daughter Guadalupe Elizabeth Gutierrez Moreno, natives and citizens
of Ecuador, petition for review of the Board of Immigration Appeals' ("BIA")

* 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).

order denying their motion to reopen. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo claims of due process violations, including ineffective assistance of counsel claims. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

We agree with the BIA that petitioners failed to show they were prejudiced by their former counsel's performance. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir. 2003) (where petitioner's counsel failed to file a brief with the BIA, presumption of prejudice was rebutted because petitioner could not demonstrate plausible grounds for relief).

Petitioners contend that the BIA violated due process in requiring them to show plausible grounds for relief without providing a transcript of their hearing. Petitioners, however, have not demonstrated that they were prejudiced by the lack of a transcript. *Cf. Siong v. INS*, 376 F.3d 1030, 1041-42 (9th Cir. 2004) (holding that a transcript would reveal whether petitioner had plausible grounds for relief where IJ denied asylum claim in part due to petitioner's unresponsive answers, and the transcript could reveal these were due to a faulty translation).

Petitioners' contention that the BIA used the incorrect prejudice standard is not supported by the record.

PETITION FOR REVIEW DENIED.