

DEC 22 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERTO GONZALEZ ROSALEZ;  
MARTHA ALICIA BACILIO; et al.,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-70760

Agency Nos. A095-177-575

A095-177-576

A078-112-622

MEMORANDUM \*

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

Submitted December 15, 2009\*\*

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Alberto Gonzalez Rosalez, Martha Alicia Bacilio, and their child, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to remand. We have jurisdiction under 8

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. § 1252. We review for abuse of discretion the denial of a motion to remand and review de novo due process claims alleging ineffective assistance of counsel. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

We agree with the BIA that the petitioners failed to demonstrate ineffective assistance of counsel. *See Lin v. Ashcroft*, 377 F.3d 1014, 1027 (9th Cir. 2004).

In the motion to remand, petitioners presented evidence that Martha had given birth to twins, but did not claim that the new children would suffer hardship. The remaining evidence presented with the motion to reopen concerned the same basic hardship grounds as their application for cancellation of removal. We therefore lack jurisdiction to review the BIA's discretionary determination that the evidence would not alter its prior discretionary determination that petitioners failed to establish the requisite hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 600 (9th Cir. 2006).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**