

JAN 22 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CIRILO JAIMES-MEDINA; BEATRIZ DIAZ-GUTIERREZ,</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. 07-73349

Agency Nos. A074-332-987
A095-604-795

MEMORANDUM*

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

Submitted January 11, 2009**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Cirilo Jaimes-Medina and his wife, Beatriz Diaz-Gutierrez, natives and citizens of Mexico, petition for review of an order of the Board of Immigration Appeals (“BIA”) denying their appeal of 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denying their application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo claims of due process violations in immigration proceedings. *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 620 (9th Cir. 2006). We dismiss in part and deny in part the petition for review.

Petitioners' contention that the IJ violated due process by basing part of his hardship determination on the temporary nature of their qualifying relative's need for counseling is not supported by the record and does not amount to a colorable constitutional claim. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005) (“[T]raditional abuse of discretion challenges recast as alleged due process violations do not constitute colorable constitutional claims that would invoke our jurisdiction.”). We therefore lack jurisdiction over this claim.

Contrary to petitioners' contention, the BIA's decision adequately addressed the due process claim, thus making remand under *Montes-Lopez v. Gonzales*, 486 F.3d 1163 (9th Cir. 2007) unnecessary; *see also Fernandez v. Gonzales*, 439 F.3d 592, 603-04 (9th Cir. 2006).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.