

FEB 24 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JULIAN GONZALEZ-RAMIREZ;
MARIA GUADALUPE LUPERCIO-
LUNA,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74809

Agency Nos. A095-309-051
A095-309-050

MEMORANDUM*

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

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Julian Gonzalez-Ramirez and Maria Guadalupe Lupercio-Luna, husband and
wife and natives and citizens of Mexico, petition for review of the Board of

* 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).

Immigration Appeal's ("BIA") order denying their motion to reopen immigration proceedings. We dismiss the petition for review.

The evidence petitioners presented with their motion to reopen concerned the same basic hardship grounds as their application for cancellation of removal. *See Fernandez v. Gonzalez*, 439 F.3d 592, 602-03 (9th Cir. 2006). We therefore lack jurisdiction to review the BIA's discretionary determination that the evidence was insufficient to establish a prima facie case of hardship. *See id.* at 601.

Our conclusion that we lack jurisdiction to review the BIA's determination that petitioners did not make out a prima facie case of hardship forecloses their contention that the BIA violated due process. *See id.* at 603-04.

PETITION FOR REVIEW DISMISSED.