

MAR 25 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GUSTAVO VARGAS; GABRIELA
MADRICAL ESTRELLA, a.k.a. Gabriela
Madrigal Estrella; MAYRA LEZETH
ELIAS,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-73485

Agency Nos. A078-243-982

A079-535-460

A079-535-461

MEMORANDUM *

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

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Gustavo Vargas, Gabriela Madrical Estrella, and Mayra Lezeth Elias,

husband, wife and daughter, and natives and citizens of Mexico, petition for review

* 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).

of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's removal order and denying their motion to remand. We have jurisdiction under 8 U.S.C. § 1252. We deny in part and grant in part the petition for review and remand for further proceedings.

Vargas and Lezeth Elias have failed to challenge the agency's denials of their applications for cancellation of removal and thus, have waived those issues. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues which are not specifically raised and argued in a party's opening brief are waived).

The agency determined that Madrical Estrella's failure to submit her fingerprints was sufficient reason to deny her application for cancellation of removal. The agency, however, did not have the benefit of our intervening decision in *Cui v. Mukasey*, 538 F.3d 1289 (9th Cir. 2008), which held that refusing to continue proceedings for fingerprint processing prior to April 2005 may be an abuse of discretion. We therefore remand for the agency to reconsider its denial of Madrical Estrella's application. *See id.* at 1292-95; *see also Karapetyan v. Mukasey*, 543 F.3d 1118, 1129-32 (9th Cir. 2008).

In light of our disposition, we do not reach Madrical Estrella's challenge to the BIA's denial of her motion to remand.

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW DENIED in part; GRANTED in part;
REMANDED.**