

APR 13 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GUILLERMO VARGAS-CANO; MARIA
DEL CARMEN VARGAS-CORDERO,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-72451

Agency Nos. A095-451-021
A095-451-022

MEMORANDUM*

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

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Guillermo Vargas-Cano and Maria Del Carmen Vargas-Cordero, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen based on ineffective assistance 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).

counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We grant the petition for review.

The BIA abused its discretion in denying the motion by using an inappropriate standard of review. *See Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 858 (9th Cir. 2004). Although the BIA appropriately considered whether ineffective assistance “may have affected the case,” it applied too stringent a standard when it stated that “we are not compelled to find” that counsel’s performance was so inadequate as to meet that standard. *See id.* at 858-59.

Accordingly, we grant the petition for review, and remand for the BIA to consider whether competent counsel would have acted otherwise, and, if so, to consider under the correct standard whether petitioners were thereby prejudiced.

PETITION FOR REVIEW GRANTED; REMANDED.