

APR 14 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FERNANDO ABEL HUERTA CACHO;
SANDRA RIVERO FRAYSSINET,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-74421

Agency Nos. A095-190-477

A095-190-478

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.

Fernando Abel Huerta Cacho, and Sandra Rivero Frayssinet, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their appeal, which the BIA construed as a motion to reopen

* 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).

removal proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Reyes v. Ashcroft*, 358 F.3d 592, 595 (9th Cir. 2004). We deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen based on its finding that, even if the motion was timely, petitioners failed to satisfy the procedural requirements set forth in *Matter of Lozada*, 19 I. & N. Dec. 637, 689 (BIA 1988), and the ineffective assistance they allege is not plain on the face of the record. *See id.* at 597-99.

The petitioners contention the BIA erred by denying the motion to reopen without out considering that it was a joint request to reopen. We reject this contention because it is belied by the record – the government did not join in the request to reopen.

PETITION FOR REVIEW DENIED.