

JUL 19 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DILBAGH SINGH DILBAR; GURPREET SINGH,</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. 07-73990

Agency Nos. A070-663-614
A076-671-615

MEMORANDUM*

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

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Dilbagh Singh Dilbar and Gurpreet Singh, natives and citizens of India, petition for review of the Board of Immigration Appeals’ (“BIA”) order denying their motion to reopen based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial 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).

a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we grant and remand the petition for review.

The BIA abused its discretion in denying petitioners' motion to reopen where the record indicates that petitioners' first attorney failed to properly notify petitioners of their hearing date. *See Iturribarria*, 321 F.3d at 897 (equitable tolling available where petitioner is prevented from filing because of "deception, fraud, or error"); *see also* AR 20-21. We therefore remand for further proceedings.

PETITION FOR REVIEW GRANTED; REMANDED.