

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE FRANCISCO YANEZ LOPEZ; et
al.,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-72387

Agency Nos. A095-200-552

A095-200-553

A095-200-554

A095-200-555

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Jose Francisco Yanez Lopez and family, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reconsider. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider, *Mohammed v.*

* 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).

Gonzales, 400 F.3d 785, 791 (9th Cir. 2005), and we deny in part and dismiss in part the petition for review.

The BIA acted within its discretion in denying petitioners' motion to reconsider because petitioners failed to demonstrate an error in the BIA's prior conclusion that petitioners were prejudiced by prior counsels' representation. *See* 8 C.F.R. § 1003.2(b)(1) (motion shall identify an error of fact or law in the BIA's prior decision); *see also Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 826 (9th Cir.2003) (petitioner must demonstrate prejudice to prevail on an ineffective assistance of counsel claim).

We lack jurisdiction to consider petitioners' claim that the BIA failed to consider all of the evidence because they did not exhaust this claim before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.