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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ISIDRO ESPINOZA HERNANDEZ and
ESTELA AVILA ESPINOZA,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-71595

Agency Nos. A075-481-755
A075-481-756

MEMORANDUM*

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

Submitted April 20, 2011**

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

Isidro Espinoza Hernandez and Estela Avila Espinoza, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's ("IJ") removal order. We

* 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).

have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand.

The agency declined to entertain petitioners' request to consider additional evidence in support of their cancellation of removal applications without the benefit of our decision in *Fernandes v. Holder*, 619 F.3d 1069, 1074 (9th Cir. 2010) (“[T]he IJ’s jurisdiction on remand from the BIA is limited only when the BIA expressly retains jurisdiction and qualifies or limits the scope of the remand to a specific purpose. An articulated purpose for the remand, without any express limit on scope, is not sufficient to limit the remand such that it forecloses consideration of other new claims or motions that the IJ deems appropriate or that are presented in accordance with relevant regulations.”). *See also Matter of M-D-*, 24 I. & N. Dec. 138, 141-42 (BIA 2007) (an IJ has authority to consider additional evidence on remand “if it is material, was not previously available, and could not have been discovered or presented at the former hearing”). We therefore remand to allow the agency to reconsider petitioners’ request to present additional evidence in light of the intervening case law.

In light of our disposition, we do not address petitioners’ remaining contentions.

PETITION FOR REVIEW GRANTED; REMANDED.