

JUL 13 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARGARITA CARDENAS DE
CASTANEDA; FRANCISCO
CASTANEDA CARDENAS; HUBER
CASTANEDA CARDENAS; REYNA
CASTANEDA CARDENAS,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-73072

Agency Nos. A095-194-893

A095-447-210

A095-449-448

A095-449-449

MEMORANDUM*

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

Submitted July 11, 2011
Pasadena, California

Before: FERNANDEZ, RYMER, and TALLMAN, Circuit Judges.

Margarita Cardenas de Castaneda and three of her children, all natives and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

citizens of Mexico, petition for review of a BIA decision denying their motion to reopen. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

Petitioners failed to exhaust their sole claim, ineffective assistance of counsel, by raising that issue before the BIA in a motion to reopen. As a prudential matter, when such claims relate to attorney conduct that occurred prior to and during the removal proceedings, as they do here, “the BIA [is] the appropriate body to first pass on the claims in order to generate a proper record for review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Though petitioners may not have realized they had such a claim until their new counsel was appointed, the period to file a motion to reopen may be equitably tolled during periods where petitioners are receiving ineffective assistance of counsel. *Iturribarria v. INS*, 321 F.3d 889, 898 (9th Cir. 2003). We therefore deny the petition.

DENIED.