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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DINESH KHANNA; et al.,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-73020

Agency Nos. A095-459-567

A095-459-568

A095-459-569

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration AppealsSubmitted August 31, 2011\*\*  
Pasadena, California

Before: ALARCÓN, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Dinesh Khanna, his wife, and his son, citizens of India, petition for review of the Board of Immigration Appeals' dismissal of their appeal from an immigration judge's order denying their applications for adjustment under Section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i). Petitioners contend that the

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\* 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).

agency erred in ruling that Dinesh Khanna failed to meet his burden of establishing that the April 2, 2001 application for alien employment certification filed on his behalf was “‘approvable when filed’ within the meaning of 8 C.F.R. § 1245.10(a).” We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition. The BIA’s determination that the application for alien employment certification filed on Khanna’s behalf was not meritorious in fact or approvable when filed is consistent with the agency’s interpretation of the implementing regulations for eligibility to be “grandfathered” under Section 245(i), *Matter of Riero*, 24 I. & N. Dec. 267, 268-69 (BIA 2007), and is supported by substantial evidence.

**PETITION FOR REVIEW DENIED.**