

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 31 2011

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

NIMISH SHIRISH DAVE;
JUI ROHIT PATEL,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney
General,

Respondent.

) No. 07-71415

)
) Agency Nos. A079-195-915
) A079-195-916

) **MEMORANDUM***

NIMISH SHIRISH DAVE;
JUI ROHIT PATEL,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney
General,

Respondent.

) No. 07-72573

)
) Agency Nos. A079-195-915
) A079-195-916

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

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

Submitted October 11, 2011**
Pasadena, California

Before: FERNANDEZ and CALLAHAN, Circuit Judges, and TIMLIN,**
District Judge.

Nimish Shirish Dave and Jui Rohit Patel,¹ citizens of Canada, petition for review of the Board of Immigration Appeals' denial of their motion to reopen to consider an application for adjustment of status,² and their motion to reconsider that denial.³ We deny the petitions.

Dave asserts that the BIA erred when it determined that he had not made out a prima facie case for adjustment of status pursuant to 8 U.S.C. § 1255(i)(1), (2). We disagree. Dave failed to present sufficient evidence that he had an approved labor certification. See 8 U.S.C. § 1182(a)(5)(A). Absent that, Dave could not spell out a prima facie case for relief because he needed that in order to obtain an

**The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

***The Honorable Robert J. Timlin, Senior United States District Judge for the Central District of California, sitting by designation.

¹While Patel filed a separate appeal, no separate arguments are made on her behalf. Thus, we treat her position here as derivative of Dave's and will not refer to her separately. See 8 U.S.C. § 1153(d).

²See 8 U.S.C. § 1229a(c)(7)(B).

³See 8 U.S.C. § 1229a(c)(6)(C).

immigrant visa,⁴ which he, in turn, needed to obtain adjustment of status.⁵ The BIA did not abuse its discretion. See Edu v. Holder, 624 F.3d 1137, 1142 n.4 (9th Cir. 2010); Ghahremani v. Gonzales, 498 F.3d 993, 997 (9th Cir. 2007); see also INS v. Doherty, 502 U.S. 314, 323, 112 S. Ct. 719, 725, 116 L. Ed. 2d 823 (1992).

Petitions DENIED.

⁴8 U.S.C. § 1153(b)(3)(C).

⁵8 U.S.C. § 1255(i)(2)(A).