

JUL 25 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARIO ALFONSO GARCIA OLIVARES; et al.,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 10-73003

Agency Nos. A076-853-803
A076-853-804
A076-853-805
A076-853-877

MEMORANDUM*

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

Submitted July 17, 2012**

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

Mario Alfonso Garcia Olivares and family, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals’ (“BIA”) order denying their motion to reopen removal proceedings. Our jurisdiction is governed by 8

* 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).

U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo claims of due process violations. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying the motion to reopen based on ineffective assistance of counsel where petitioners failed to establish prejudice. *Iturribarria v. INS*, 321 F.3d 889, 899-900 (9th Cir. 2003) (requiring prejudice to prevail on ineffective assistance claim).

We lack jurisdiction to review the BIA's determination that the new evidence for cancellation of removal submitted with the motion was insufficient to establish the requisite hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 601-603 (9th Cir. 2006).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.