

SEP 17 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HUNG NGOC HOANG, a.k.a. Nghia Van  
Le; KIM HUE THI AU, a.k.a. Minh Thien  
Thi Nguyen,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-73133

Agency Nos. A098-251-990  
A098-251-991

MEMORANDUM\*

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

Submitted September 10, 2012\*\*

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Hung Ngoc Hoang and Kim Hue Thi Au, natives and citizens of Vietnam,  
petition for review of the Board of Immigration Appeals’ (“BIA”) order sustaining  
the government’s appeal from an immigration judge’s (“IJ”) decision granting their

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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).

applications for a waiver under 8 U.S.C. § 1182(i). Our jurisdiction is governed by 8 U.S.C. § 1252. We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA's denial of Hoang's application for discretionary relief under 8 U.S.C. § 1182(i). *See* 8 U.S.C. §§ 1182(i)(2), 1252(a)(2)(B)(i); *Corona-Mendez v. Holder*, 593 F.3d 1143, 1146 (9th Cir. 2010). To the extent Hoang argues that the BIA violated his constitutional rights by denying his application for a waiver under 8 U.S.C. § 1182(i), Hoang has not shown that he is similarly situated to Huynh. *See Dillingham v. INS*, 267 F.3d 996, 1007 (9th Cir. 2001) (“In order to succeed on his [equal protection] challenge, the petitioner must establish that his treatment differed from that of similarly situated persons.”)

In their opening brief, petitioners fail to raise, and therefore have waived, any challenge to the BIA's denial of Au's application for relief. *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (a petitioner waives an issue by failing to raise it in the opening brief).

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**