

AUG 16 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JORGE PEREZ TOLENTINO; BEATRIZ          ARAUZA PEREZ,</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>
---

No. 11-72514

Agency Nos.       A075-725-871  
                              A075-725-872

MEMORANDUM\*

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

Submitted August 14, 2013\*\*

Before:       SCHROEDER, GRABER, and PAEZ, Circuit Judges.

Jorge Perez Tolentino and Beatriz Arauza Perez, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals’ (“BIA”) order denying their motion to reopen removal proceedings based on ineffective

---

\* 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).

assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen where they failed to establish prejudice arising from the alleged ineffective assistance by their former counsel. *See id.* at 793-94 (“[P]rejudice results when the performance of counsel was so inadequate that it *may* have affected the outcome of the proceedings.” (emphasis in original) (internal quotation marks omitted)).

It follows that petitioners' due process claim, which rests entirely on the failure to reopen, fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and substantial prejudice to prevail on a due process claim).

In light of this disposition, we do not reach petitioners' remaining contentions.

**PETITION FOR REVIEW DENIED.**