

AUG 20 2013

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>FERNANDO HERNANDEZ-GUTIERREZ; 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. 09-71124

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|-------------|--------------|
| Agency Nos. | A079-542-401 |
| | A079-542-402 |
| | A079-542-403 |
| | A079-542-404 |

MEMORANDUM*

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

Submitted August 1, 2013**

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

Fernando Hernandez-Gutierrez and his family, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' order dismissing their appeal from an immigration judge's order denying their applications for

* 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).

cancellation of removal. 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 agency's discretionary determination that Petitioners failed to establish that qualifying relatives would experience exceptional and extremely unusual hardship upon their removal. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929-30 (9th Cir. 2005).

Petitioners do not challenge the denial of their applications for voluntary departure. Petitioners' challenge to 8 C.F.R. § 1240.26(i) is foreclosed by *Garfias-Rodriguez v. Holder*, 702 F.3d 504, 523-28 (9th Cir. 2012) (en banc).

We do not consider whether lead Petitioner established good moral character because his failure to establish the requisite hardship is dispositive. *See* 8 U.S.C. § 1229b(b)(1).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.