NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 15 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JOSE AGUSTIN MALDONADO SANCHEZ; et al., Petitioners, v. MICHAEL B. MUKASEY,** Attorney General, Respondent.	No. 05-72175 Agency Nos. A95-583-442 A95-583-443 MEMORANDUM*

JOSE AGUSTIN MALDONADO SANCHEZ; et al., Petitioners, v. MICHAEL B. MUKASEY,** Attorney General, Respondent.	No. 05-73380 Agency No. A95-583-442

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

** Michael B. Mukasey is substituted for his predecessor, Alberto R. Gonzales, as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

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

Argued and Submitted October 17, 2007
San Francisco, California

Before: WALLACE, KLEINFELD, and RAWLINSON, Circuit Judges.

Jose Agustin Maldonado Sanchez and Maria De La Cruz Navarro, husband and wife and natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") March 16, 2005 order dismissing their appeal from an immigration judge's decision denying their applications for cancellation of removal and the BIA's May 9, 2005 order denying their motion to reopen removal proceedings. We dismiss the petitions for review in all respects, except that we deny the Petitioners' due process claims.

We lack jurisdiction to review the agency's discretionary determination that Petitioners failed to show exceptional and extremely unusual hardship. See Romero-Torres v. Ashcroft, 327 F.3d 887, 890 (9th Cir. 2003). We view Petitioners' contentions that the agency made unsupported factual findings and applied an improper legal standard in making its hardship determination as veiled attempts to circumvent the jurisdictional bar to our review of that determination. See Martinez-Rosas v. Gonzales, 424 F.3d 926, 930 (9th Cir. 2005) (holding that

petitioner's contention "that the IJ erred in finding that she did not [establish the requisite hardship was] nothing more than an argument that the IJ abused his discretion, a matter over which we have no jurisdiction").

The evidence Petitioners presented with their motion to reopen concerned the same basic hardship grounds as their application for cancellation of removal. See Fernandez v. Gonzales, 439 F.3d 592, 602-03 (9th Cir. 2006). We therefore lack jurisdiction to review the BIA's discretionary determination that the evidence was insufficient to establish a prima facie case of hardship. See id. at 601 (if "the BIA determines that a motion to reopen proceedings in which there has already been an unreviewable discretionary determination concerning a statutory prerequisite to relief does not make out a prima facie case for that relief," 8 U.S.C. § 1252(a)(2)(B)(i) bars this court from revisiting the merits).

Based on the record, Petitioners' contention that the BIA violated their due process rights by disregarding the additional evidence submitted with their motion to reopen cannot "overcome the presumption that the BIA did review the record." Fernandez, 439 F.3d at 603. Petitioners' argument that the BIA violated due process by providing an inadequate explanation of its decision does not succeed because concerns "about our ability to review inadequately reasoned or cursory

BIA decisions" do not apply where we have no jurisdiction to engage in such review. Id. at 604.

DISMISSED in part, DENIED in part.