

**SEP 27 2007**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

RUBEN VARGAS-ROMERO; et al.,

Petitioners,

v.

PETER D. KEISLER,\* Acting Attorney  
General,

Respondent.

No. 04-75958

Agency Nos. A79-588-570  
A79-588-571

MEMORANDUM\*\*

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

Submitted September 24, 2007 \*\*\*

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

Ruben Vargas-Romero and his wife Candelaria Nava De Vargas, natives

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\* Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

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

\*\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an Immigration Judge's ("IJ") decision denying their application for cancellation of removal, and denying their motion to remand. To the extent we have jurisdiction, it is pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to remand. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We review de novo claims of constitutional violations in immigration proceedings. *See Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA's discretionary determination that petitioners failed to show exceptional and extremely unusual hardship to a qualifying relative. *See Romero-Torres v. Ashcroft*, 327 F.3d 887, 890 (9th Cir. 2003).

Petitioners' contention that the BIA violated their due process rights by disregarding their evidence of hardship does not amount to a colorable constitutional claim where the record indicates that the BIA did evaluate the evidence regarding medical, psychological, and educational hardship. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

The BIA did not abuse its discretion in denying petitioners' motion to remand because they provided insufficient evidence that any ineffective assistance

of counsel prejudiced their case. *See Iturribarria*, 321 F.3d at 899-90.

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