

FILED

OCT 2 2007

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

FELIPE OLIMPO GODINEZ-TEJEDA;
MARGARITA GODINEZ-MEDINA,

Petitioners,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 05-72934

Agency Nos. A75-640-211
A76-715-561

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.

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

** 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).

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

Felipe Olimpo Godinez-Tejeda and his wife Margarita Godinez-Medina, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order adopting and affirming the decision of an immigration judge ("IJ") denying their applications for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review questions of law de novo. *Cabrera-Alvarez v. Gonzales*, 423 F.3d 1006, 1009 (9th Cir. 2005). We grant the petition for review, and remand for further proceedings.

The agency concluded that Petitioners were statutorily ineligible for cancellation of removal based on Godinez-Medina's testimony that she and Godinez-Tejeda paid a smuggler to assist her and their infant son to enter the United States without inspection. The IJ, however, did not have the benefit of this court's decision in *Moran v. Ashcroft*, 395 F.3d 1089, 1093-94 (9th Cir. 2005) (cancellation of removal application not barred by alien smuggling provision where applicant assisted spouse, parent or son or daughter to enter the United States), and the BIA failed to apply it. In light of *Moran*, Petitioners remain eligible for cancellation of removal, and the agency improperly pretermitted their applications.

In accordance with *INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam), we remand for further proceedings consistent with this decision.

PETITION FOR REVIEW GRANTED; REMANDED.