

DEC 28 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FLORENTINO ZUNIGA COLIN; IRIDIA VIRGINIA COLIN PAREDES,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney General,

Respondent.

No. 06-73296

Agency Nos. A75-706-881
A75-706-882

MEMORANDUM*

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

Submitted December 20, 2007**

Before: GOODWIN, WALLACE, and HAWKINS, Circuit Judges.

Florentino Zuniga Colin and Iridia Virginia Colin Paredes, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen removal proceedings and remand.

* 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).

We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and we grant the petition for review and remand for further proceedings.

The BIA abused its discretion by failing to adequately address new and material evidence regarding petitioners' son's special educational needs. *See Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003) (holding that reopening is appropriate "where the new facts alleged, when coupled with the facts already of record, satisfy us that it would be worthwhile to develop the issues further at a plenary hearing on reopening") (quoting *Matter of S-V-*, 22 I. & N. Dec. 1306, 1308 (BIA 2000) (en banc)). We therefore grant the petition for review and remand for reconsideration of petitioners' motion to reopen.

The temporary stay of removal and voluntary departure confirmed by Ninth Circuit General Order 6.4(c) and *Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004), shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW GRANTED; REMANDED.