

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 17 2008

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

JUAN MANUEL PEREZ; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-73782

Agency Nos. A95-182-452

A95-182-453

A95-182-454

MEMORANDUM *

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

Submitted March 10, 2008 **

Before: T.G. NELSON, TASHIMA and BYBEE, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA") order adopting and affirming an Immigration Judge's order denying petitioners' application for cancellation of removal.

* 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).

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We have reviewed the response to the court's October 1, 2007 order to show cause, and we conclude that petitioners Juan Manuel Perez and Candelaria Avendano have failed to raise a colorable constitutional or legal claim to invoke our jurisdiction over this petition for review. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926 (9th Cir. 2005); *Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001). Accordingly, the court dismisses this petition for review as to Juan Manuel Perez and Candelaria Avendano for lack of jurisdiction. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Romero-Torres v. Ashcroft*, 327 F.3d 887, 892 (9th Cir. 2003); *Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1144 (9th Cir. 2002).

A review of the response to the court's October 1, 2007 order to show cause and the administrative record also demonstrates that petitioner Oscar Perez presented at the time of his merits hearing no evidence that he had a qualifying relative for purposes of cancellation of removal as defined in 8 U.S.C. § 1229b(b)(1)(D). *See Molina-Estrada v. INS*, 293 F.3d 1089, 1093-94 (9th Cir. 2002). The BIA therefore correctly concluded that, as a matter of law, petitioner was ineligible for cancellation of removal. Accordingly, the questions raised by this petition for review as to Oscar Perez are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982)

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(per curiam). To the extent petitioner Oscar Perez claims he has recently married and now has a qualifying relative, we lack jurisdiction to consider unexhausted claims that could have been corrected by the Board of Immigration Appeals. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

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.

Petitioners' motion for in forma pauperis status is granted. All other pending motions are denied as moot.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.