

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 08 2008

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

RODOLFO CONTRERAS ARISPE;
MANUELA MALDONADO GAMA,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-74424

Agency Nos. A79-519-035
A79-519-036

MEMORANDUM*

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

Submitted August 26, 2008**

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

Rodolfo Contreras Arispe and Manuela Maldonado Gama, married natives
and citizens of Mexico, petition for review of the Board of Immigration Appeals'

* 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).

(“BIA”) order dismissing their appeal from an immigration judge’s decision denying their applications for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law and constitutional claims. *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1107 (9th Cir. 2003). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the agency’s discretionary determination that petitioners failed to show exceptional and extremely unusual hardship to their qualifying relatives. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Romero-Torres v. Ashcroft*, 327 F.3d 887, 892 (9th Cir. 2003).

The agency’s interpretation and application of the hardship standard fell within the broad range authorized by the statute, *see Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004 (9th Cir. 2003), and petitioners’ contention that the agency violated their due process rights by failing properly to consider their hardship evidence does not amount to a colorable constitutional claim. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

Petitioners’ contention that their removal would result in the deprivation of their children’s rights is not supported. *See Cabrera-Alvarez v. Gonzales*, 423 F.3d 1006, 1012-13 (9th Cir. 2005); *Urbano de Malaluan v. INS*, 577 F.2d 589, 594 (9th

Cir. 1978) (rejecting argument that deportation of parents amounts to de facto deportation of child and thus violates child's constitutional rights).

The BIA also did not err when it declined to consider new evidence presented by petitioners on appeal. Under regulations effective September 25, 2002, the BIA is not permitted to “engage in factfinding in the course of deciding appeals,” and petitioners did not file a motion to remand. *See* 8 C.F.R. § 1003.1(d)(3)(iv).

We do not address whether the agency erred in determining that Contreras' conviction for spousal battery falls under 8 U.S.C. § 1227(a)(2), precluding his eligibility for cancellation of removal, because the hardship determination is dispositive. *See* 8 U.S.C. § 1229b(b)(1)(D) (to be eligible for cancellation of removal the applicant must establish the requisite hardship).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.