

OCT 10 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

GABRIEL MATA CERVANTES and
CLAUDIA LARA MARTINEZ,

Petitioners,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 07-71659

Agency Nos. A79-532-534
A95-306-249

MEMORANDUM*

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

Submitted October 1, 2007***

Before: B. FLETCHER, BERZON, and IKUTA, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
denial of a motion to reconsider or reopen petitioners' denied applications for

* 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).

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

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cancellation of removal.

We lack jurisdiction to review the BIA's discretionary determination that statements in the motion to reconsider or reopen describing petitioners' child Michelle's continuing special education needs would not alter its prior discretionary determination that petitioners failed to establish the requisite hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 600, 602-03 (9th Cir. 2006).

The BIA did not abuse its discretion in denying petitioners' motion to reconsider or reopen because petitioners failed to demonstrate that the recent birth of their daughter Gabriela materially affected their hardship claim. *See* 8 C.F.R. § 1003.2; *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000) (stating standard).

All other pending motions are denied as moot. 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 DISMISSED in part; DENIED in part.