

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 10 2008

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

JUAN ERNESTO OROZCO-ROSALES;
et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-73728

Agency Nos. A077-082-111
A077-082-110

MEMORANDUM*

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

Submitted December 8, 2008**
Pasadena, California

Before: BRUNETTI, SILVERMAN and BEA, Circuit Judges.

Juan Ernesto Orozco-Rosales and his wife Guadalupe Orozco-Gonzales
petition for review of the Board of Immigration Appeals' decision affirming and

* 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).

adopting the Immigration Judge's denial of their application for cancellation of removal. We dismiss in part and deny in part the petition for review.

Petitioners challenge the IJ's decision denying them cancellation of removal, arguing that they met the "exceptional and extremely unusual hardship" test. We lack jurisdiction to consider this argument since the IJ's hardship determination is a discretionary decision over which our jurisdiction has been eliminated. *See De Lourdes v. Mukasey*, 539 F.3d 1102, 1105-06 (9th Cir. 2008); *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005). Accordingly, the petition for review is dismissed insofar as it challenges the IJ's "exceptional and extremely unusual hardship" determination.

We have jurisdiction over petitioners' constitutional argument that the denial of their applications for cancellation of removal violated the equal protection clause because similarly-situated aliens from countries covered under the Nicaraguan Adjustment and Central American Relief Act ("NACARA") benefit from relaxed requirements for relief. However, this argument fails on the merits. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 602-03 (9th Cir. 2002) ("NACARA easily satisfies the rational basis test"). Petitioners' constitutional challenge to IIRIRA is similarly meritless. *Ram v. I.N.S.*, 243 F.3d 510, 517 (9th Cir. 2001).

Petitioners finally claim that the BIA failed to articulate its reasons for denying petitioners' request for relief from deportation. However, the BIA stated that it "adopt[ed] and affirm[ed]" the IJ's determination and cited *Matter of Burbano*, 20 I & N Dec. 872, 874 (BIA 1994). "A *Burbano* affirmance signifies that the BIA has conducted an independent review of the record and has determined that its conclusions are the same as those articulated by the IJ." *Figueroa v. Mukasey*, 543 F.3d 487, 491 (9th Cir. 2008). Since the BIA can adequately explain its reasoning by adopting the IJ's decision as it did here, *see Alaelua v. I.N.S.*, 45 F.3d 1379, 1381-82 (9th Cir. 1995), petitioners' argument fails and the petition is denied.

PETITION DISMISSED IN PART AND DENIED IN PART.