

DEC 29 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DANIEL ARTURO VALENCIA PUEBLA; RITA ISELA ORTIZ VALENZUELA,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 05-74189

Agency Nos. A075-755-328  
A075-755-329

MEMORANDUM\*

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

Submitted December 17, 2008\*\*

Before: GOODWIN, TROTT, and RYMER, Circuit Judges.

Daniel Arturo Valencia Puebla and Rita Isela Ortiz Valenzuela, husband and  
wife and natives and citizens of Mexico, petition for review of the Board of

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\* 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).

Immigration Appeals' ("BIA") order denying their motion to accept an untimely brief and dismissing their appeal from an immigration judge's decision denying their applications for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we grant the petition for review and remand.

The BIA's order denying petitioners' motion states: "We find the reason stated by [petitioners] insufficient for us to accept the untimely brief in our exercise of discretion." The absence of a reasoned explanation by the BIA for denying the motion prevents us from "perform[ing] any meaningful appellate review." *Garcia Gomez v. Gonzales*, 498 F.3d 1050, 1051 (9th Cir. 2007) (per curiam).

Because the BIA on remand could reach a different conclusion regarding petitioners' hardship and continuous physical presence determinations if it decides to consider petitioners' brief, we do not reach their other due process claims.

**PETITION FOR REVIEW GRANTED; REMANDED.**