

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OFELIA GOMEZ-VILLASENOR,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 06-75320

Agency No. A075-744-482

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.

Ofelia Gomez-Villasenor, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reopen. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo ineffective

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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).

assistance of counsel claims. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

We agree with the BIA that Gomez-Villasenor's ineffective assistance of counsel claim fails because she did not establish that the outcome of her removal proceedings may have been adversely affected by her former counsel's alleged ineffective assistance, *see Iturribarria v. INS*, 321 F.3d 889, 902 (9th Cir. 2003), or by her notary's advice to file an asylum application, *see Lara-Torres v. Ascroft*, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005).

The BIA did not abuse its discretion by denying Gomez-Villasenor's motion to reopen, because the BIA considered the evidence Gomez-Villasenor submitted and acted within its broad discretion in determining that the evidence was insufficient to warrant reopening. *See Singh v. INS*, 295 F.3d 1037, 1039 (9th Cir. 2002) (The BIA's denial of a motion shall be reversed only if it is "arbitrary, irrational or contrary to law.").

We lack jurisdiction to review Gomez-Villasenor's contention that the birth of her third child warrants reopening. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (the court lacks jurisdiction over claims not presented in the administrative proceedings below).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**