

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FELIX LOZANO SANCHEZ; et al.,</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. 07-71833

Agency Nos. A079-540-744  
A079-540-745

MEMORANDUM\*

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

Submitted December 17, 2008\*\*

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

Felix Lozano Sanchez and Maria Angelica Lozano, husband and wife and natives and citizens of Mexico, petition pro se 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 denial of their motion for reconsideration challenging the underlying denial of their application for cancellation of removal due to petitioners' failure to establish the requisite hardship to their qualifying relatives and the female petitioner's failure to establish ten years of continuous residence in the United States.

The evidence that petitioners presented with their motion for reconsideration concerned the same basic hardship grounds as their application for cancellation of removal. We therefore lack jurisdiction to review the BIA's discretionary determination that the evidence was insufficient to establish a prima facie case of hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 601-03 (9th Cir. 2006). In addition, the female petitioner's constitutional challenges to the agency's decision to place her into removal rather than deportation proceedings lack merit. *See Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1108 (9th Cir. 2003); *Hernandez-Mezquita v. Ashcroft*, 293 F.3d 1161, 1163-65 (9th Cir. 2002); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002).

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