

APR 29 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO MENDOZA TORRES,
SUSANA ZEPEDA ESQUIVEL;

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 03-73478

Agency Nos. A075-771-014
A075-771-015

MEMORANDUM*

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

Submitted April 13, 2009**

Before: GRABER, GOULD and BEA, Circuit Judges.

Francisco Mendoza Torres and Susana Zepeda Esquivel, married natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' order dismissing their appeal from an immigration judge's ("IJ") decision denying their

* 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).

application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo due process claims. *Montes-Lopez v. Gonzales*, 486 F.3d 1163, 1165 (9th Cir. 2007). We dismiss in part, deny in part, and grant in part the petition for review, and remand.

We lack jurisdiction to review the agency's discretionary determination that petitioners failed to show exceptional and extremely unusual hardship to a qualifying relative. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

Contrary to petitioners' contention, the IJ's application of the hardship standard falls within the broad range authorized by statute. *See Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004 (9th Cir. 2003).

Petitioners contend the IJ violated their due process rights by exhibiting bias and interrupting their testimony and that of their witnesses. Petitioners raised this issue to the BIA, which summarily affirmed the IJ's decision without addressing it. Because the BIA is not free to ignore arguments raised by petitioners, *see Montes-Lopez*, 486 F.3d at 1165, we remand for the BIA to consider petitioners' contention.

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