

APR 29 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ANITA MUNGUIA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
---

No. 07-73324

Agency No. A079-530-069

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.

Anita Munguia, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' denial of her motion to reconsider and to reopen the underlying denial of her application for cancellation of removal based

---

\* 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).

on her failure to establish the requisite extreme hardship to her qualifying longtime permanent resident parents.

Petitioner contends that she offered new evidence of hardship, and the BIA erred in denying her motion to reopen based on its finding that her parents would not suffer hardship upon her removal. Petitioner also contends that the BIA and immigration judge erred in finding that she failed to establish the requisite ten years continuous presence in the United States.

The evidence of hardship to petitioner's qualifying relatives that petitioner presented with her motion to reopen concerned the same basic hardship ground as her initial 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). Furthermore, neither the BIA nor the IJ addressed the continuous residency requirement because the agency decided the case on the dispositive issue of extreme hardship; and we do not consider petitioner's claims concerning that issue.

**PETITION FOR REVIEW DISMISSED.**