

AUG 06 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRINIDAD SANCHEZ AGUIRRE;
JUAN VALENTIN ESTRADA
SANCHEZ; VICTOR HUGO ESTRADA
SANCHEZ; GUSTAVO ESTRADA
SANCHEZ; JOSE GUADALUPE
ESTRADA SANCHEZ,

Petitioners,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-72464

Agency Nos. A079-542-507
A079-542-508
A079-542-509
A079-542-510
A079-542-511

MEMORANDUM*

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

Submitted July 29, 2009**

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

* 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).

Trinidad Sanchez Aguirre, Juan Valentin Estrada Sanchez, Victor Hugo Estrada Sanchez, Gustavo Estrada Sanchez, and Jose Guadalupe Estrada Sanchez, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003), and review de novo claims of due process violations in immigration proceedings, *Sanchez-Cruz v. INS*, 225 F.3d 775, 779 (9th Cir. 2001). We dismiss in part and deny in part the petition for review.

The evidence petitioners presented with their motion to reopen concerned the same basic hardship grounds previously considered by the agency. *See Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006). We therefore lack jurisdiction to review the BIA's determination that the evidence did not warrant reopening. *See id.* at 601.

To the extent petitioners contend that the BIA failed to consider the evidence they submitted with their motion to reopen, they have not overcome the presumption that the BIA did review the record. *See Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006). Petitioners' contention that the agency's decision

violated due process therefore fails. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for a due process violation).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.