

AUG 31 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FLORENCIO FIGUEROA-BAHENA;
MARIA VICTORIA FIGUEROA;
LIONEL FIGUEROA,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70220

Agency Nos. A095-195-924
A095-195-925
A095-195-926

MEMORANDUM*

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

Submitted August 10, 2010**

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

Florencio Figueroa-Bahena, Maria Victoria Figueroa, and Lionel Figueroa, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reissue the BIA's

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

previous decision dismissing their appeal from an immigration judge's order denying their applications for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and de novo claims of due process violations. *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). We deny the petition for review.

The BIA did not abuse its discretion or violate due process in denying petitioners' motion to reissue, where it considered their evidence of non-receipt and concluded that it was insufficient to rebut the presumption of proper mailing. *See Singh v. Gonzales*, 494 F.3d 1170, 1172-73 (9th Cir. 2007) (BIA is obligated to consider and address the evidence submitted by petitioner); *see also Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error for petitioner to prevail on a due process claim).

PETITION FOR REVIEW DENIED.