

APR 19 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUSTO PEDRO AJCHE; MARIA
ANGELICA AJCHE,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70142

Agency Nos. A088-102-847

A088-102-848

MEMORANDUM*

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

Submitted April 17, 2012**

Before: LEAVY, PAEZ and BEA, Circuit Judges.

Justo Pedro Ajche, a native and citizen of Guatemala, and Maria Angelica Ajche, a native and citizen of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen. We have

* 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).

jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and review de novo questions of law. *Granados-Oseguera v. Mukasey*, 546 F.3d 1011, 1014 (9th Cir. 2008) (per curiam). We deny the petition for review.

The BIA did not abuse its discretion in denying the Ajches' motion to reopen where they failed to depart the United States during their voluntary departure period, and were therefore statutorily ineligible for the relief requested. *See* 8 U.S.C. § 1229c(d)(1)(B) (imposing a ten-year bar to certain forms of relief, including cancellation of removal, for aliens who fail to depart within the time period specified); *Granados-Oseguera*, 546 F.3d at 1015-16 (when a petitioner files a motion to reopen after the expiration of the voluntary departure period, the BIA may deny the petitioner's motion to reopen based on the petitioner's failure to depart).

It follows that the BIA did not violate the Ajches' due process rights by not examining new evidence of hardship. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice for a petitioner to prevail on a due process claim).

PETITION FOR REVIEW DENIED.