

APR 19 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN MARIN COLCHADO; SUSANA MARIN,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 10-71722

Agency Nos. A095-002-041
A095-002-042

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.

Juan Marin Colchado and Susana Marin, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying their motion to reopen removal proceedings based on ineffective

* 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).

assistance of counsel. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and review de novo claims of due process violations. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

The BIA did not abuse its discretion in denying petitioners' motion to reopen. Petitioners' evidence is not sufficient to show that the alleged ineffective assistance of counsel may have affected the outcome of their proceedings. *See Iturribarria v. INS*, 321 F.3d 889, 901-02 (9th Cir. 2003) (requiring prejudice to prevail on ineffective assistance claim). In addition, petitioners cannot establish ineffective assistance based on the actions leading to the institution of their removal proceedings. *See Lara-Torres v. Ashcroft*, 383 F.3d 968, 973-75 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005) (no ineffective assistance where representative's incorrect advice led to issuance of Notice to Appear and petitioner was ineligible for relief).

PETITION FOR REVIEW DENIED.