

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE ABARCA-SOSA,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 04-71800

Agency No. A041-392-930

MEMORANDUM*

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

Submitted December 17, 2008**

Before: GOODWIN, TROTT, and RYMER, Circuit Judges.

Jose Abarca-Sosa, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's removal order. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review de

* 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).

novo whether an offense qualifies as an aggravated felony, *Ruiz-Morales v. Ashcroft*, 361 F.3d 1219, 1221 (9th Cir. 2004), and we grant the petition for review.

An intervening change in the law requires us to remand the petition because Abarca-Sosa's conviction for violating Cal. Penal Code § 261.5(c) is not categorically for "sexual abuse of a minor" under 8 U.S.C. § 1101(a)(43)(A), *Estrada-Espinoza v. Mukasey*, 546 F.3d 1147, 1159 (9th Cir. 2008) (en banc), and the modified categorical approach cannot be used to conform his conviction to the generic offense, *id.* at 1160. We therefore remand for the agency to consider Abarca-Sosa's application for lawful permanent resident cancellation of removal.

PETITION FOR REVIEW GRANTED; REMANDED.