

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OSCAR JESUS INIGUEZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 04-76459

Agency No. A092-394-064

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.

Oscar Jesus Iniguez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision finding that he abandoned his application for lawful

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\* 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).

permanent resident cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252, *Morales v. Gonzales*, 478 F.3d 972, 980 (9th Cir. 2007), and we grant the petition for review and remand for further proceedings.

The BIA determined that Iniguez's failure to provide his criminal history record and fingerprints in advance of his removal hearing was a sufficient ground to deem his relief application abandoned. The BIA, however, did not have the benefit of our intervening decision in *Cui v. Mukasey*, 538 F.3d 1289 (9th Cir. 2008), which held that the denial of a continuance for fingerprint processing prior to April 2005 may be an abuse of discretion. We therefore remand for the BIA to reconsider its dismissal of Iniguez's appeal. *See id.* at 1292-95; *see also Karapetyan v. Mukasey*, 543 F.3d 1118, 1129-32 (9th Cir. 2008).

In light of our disposition, we need not address Iniguez's due process contention.

**PETITION FOR REVIEW GRANTED; REMANDED.**