

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 27 2009

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

ERNEST GEVORGYAN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-70058

Agency No. A095-182-426

MEMORANDUM*

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

Submitted May 12, 2009**

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

Ernest Gevorgyan, a native and citizen of Armenia, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We

* 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).

review for abuse of discretion the denial of a motion to reopen, and review de novo ineffective assistance of counsel claims. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We grant the petition for review.

The BIA erred in concluding that Gevorgyan did not establish prejudice. Former counsel's failure to challenge the immigration judge's ("IJ") adverse credibility determination before the BIA may have affected the outcome of the proceedings. *See Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 858-59 (9th Cir. 2004) (per curiam). Given the hearing transcript, an appropriate appellate brief could have persuaded the BIA that the IJ's decision relied too heavily on inconsistencies between Gevorgyan's testimony and his asylum declaration, or that Gevorgyan was not given an adequate opportunity to explain any inconsistencies. *See Ordonez v. INS*, 345 F.3d 777, 786 (9th Cir. 2003).

We remand for further proceedings consistent with this disposition.

PETITION FOR REVIEW GRANTED; REMANDED.