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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MERCEDITA DIAL VALDELLON,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 05-70875

Agency No. A079-154-898

MEMORANDUM*

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

Submitted July 29, 2009**

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Mercedita Dial Valdellon, a native and citizen of the Philippines, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's decision denying her motion to reopen for

* 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).

adjustment of status. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003). We grant the petition for review and remand.

When considering Valdellon's appeal, the BIA did not have the benefit of our recent decision in *Ahmed v. Mukasey*, 548 F.3d 768, 772 (9th Cir. 2008), which held that the agency may not deny a motion to reopen for adjustment of status based solely on the government's objection. We therefore grant the petition for review and remand.

Valdellon's motion to supplement the record is denied as moot.

PETITION FOR REVIEW GRANTED; REMANDED.