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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CUAUHTEMOC DUARTE-RODRIGUEZ,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 04-73932

Agency No. A017-318-569

MEMORANDUM*

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

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Cuauhtemoc Duarte-Rodriguez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s removal order. We have jurisdiction under 8

* 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).

U.S.C. § 1252. We review de novo the agency's determination of questions of law, except to the extent that deference is owed to its interpretation of the governing statutes and regulations. *See Morales-Garcia v. Holder*, 567 F.3d 1058, 1061 (9th Cir. 2009). We grant the petition for review and remand.

The agency concluded that Duarte-Rodriguez was removable pursuant to 8 U.S.C. § 1227(a)(2)(A)(ii) for having been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, one of which was receipt or possession of stolen property, in violation of California Penal Code § 496(a). Subsequent to the BIA's order, we held that a conviction under § 496(a) is not categorically a crime involving moral turpitude. *See Castillo-Cruz v. Holder*, 581 F.3d 1154, 1159-61 (9th Cir. 2009).

We therefore grant the petition for review and remand for the agency to address in the first instance whether Duarte-Rodriguez's conviction for receipt or possession of stolen property qualifies as a crime involving moral turpitude under the modified categorical approach. *See Morales-Garcia*, 567 F.3d at 1066-67.

Each party shall bear its own costs for this petition for review.

PETITION FOR REVIEW GRANTED; REMANDED.