

DEC 07 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>J. REFUGIO CEJA-RIVERA, aka Jose Rivera,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 07-71782

Agency No. A072-294-331

MEMORANDUM*

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

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Jose Refugio Ceja-Rivera, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision finding him ineligible to adjust status due to his

* 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).

controlled substance offenses. We have jurisdiction under 8 U.S.C. § 1252. Reviewing de novo the agency's legal determination, *see Aguiluz-Arellano v. Gonzales*, 446 F.3d 980, 983 (9th Cir. 2006), we deny the petition for review.

We deny as moot Ceja-Rivera's request to hold this case in abeyance for proceedings in *de Jesus Melendez v. Gonzales*, 503 F.3d 1019 (9th Cir. 2007), *r'hearing denied*.

We agree with the agency's conclusion that Ceja Rivera's second controlled substance offense is not amenable to treatment under the Federal First Offenders Act, 18 U.S.C. §3607. *See id.* at 1025-27. Ceja-Rivera's contention that his second offense does not constitute a conviction for immigration purposes is not persuasive. *See id.*

PETITION FOR REVIEW DENIED.