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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE LUIS FERNANDEZ, Petitioner, v. ERIC H. HOLDER Jr., Attorney General, Respondent.	No. 07-71479 Agency No. A075-183-069 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 Luis Fernandez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an

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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).

JT/Research

immigration judge's removal order. We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand for further proceedings.

The agency determined that Fernandez's failure to submit his fingerprints at his hearing was sufficient reason to deny his application for a waiver under former Immigration and Nationality Act § 212(c), 8 U.S.C. § 1182(c). The agency, however, did not have the benefit of our intervening decision in *Cui v. Mukasey*, 538 F.3d 1289 (9th Cir. 2008), which held that refusing to continue proceedings for fingerprint processing may be an abuse of discretion. *See also* 8 C.F.R. § 1003.47(d) ("The [IJ] shall specify for the record . . . the consequences for failing to comply with the requirement [to provide fingerprints]."). We therefore remand for the agency to reconsider its denial of Fernandez's application. *See Cui*, 538 F.3d at 1292-95; *see also Karapetyan v. Mukasey*, 543 F.3d 1118, 1129-32 (9th Cir. 2008)

PETITION FOR REVIEW GRANTED; REMANDED.