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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JESUS RAMON TOLOSA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-73854

Agency No. A079-522-035

MEMORANDUM\*

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

Submitted January 11, 2010\*\*

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Jesus Ramon Tolosa, 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 denying his application for cancellation of removal.

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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).

We have jurisdiction pursuant to 8 U.S.C. § 1252, and we grant the petition for review and remand.

In concluding that Ramon Tolosa is statutorily ineligible for cancellation of removal based on his 1994 conviction for violating section 11352 of the California Health and Safety Code, the agency did not have the benefit of our decision in *Sandoval-Lua v. Gonzales*, 499 F.3d 1121, 1132 (9th Cir. 2007), where we held that an alien seeking to establish that a criminal conviction under a divisible statute does not bar cancellation of removal under the modified categorical analysis may do so by pointing to inconclusive conviction records.

We remand for the agency to reconsider Ramon Tolosa's eligibility for cancellation of removal. In light of our disposition, we need not address Ramon Tolosa's remaining contentions.

The parties shall bear their own costs on this petition for review.

**PETITION FOR REVIEW GRANTED; REMANDED.**