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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PARMINDER SINGH BHAGTANA,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-71631

Agency No. A096-152-279

MEMORANDUM*

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

Argued and Submitted March 12, 2010
San Francisco, California

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Parminder Singh Bhagtana, a native and citizen of India, petitions 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 U.S.C. § 1252. We grant the petition for review and remand for further proceedings.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The BIA determined that Bhagtana's failure to submit his fingerprints by the deadline imposed by the IJ was sufficient reason to deny his application for asylum, withholding of removal, and relief under the Convention Against Torture. *See* 8 C.F.R. § 1003.47(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. We remand for the agency to reconsider its denial of Bhagtana's application in light of *Cui*. *See id.* at 1292-95; *see also Karapetyan v. Mukasey*, 543 F.3d 1118, 1129-32 (9th Cir. 2008).

PETITION FOR REVIEW GRANTED, REMANDED.