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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOEL SOSA ELIZONDO,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-71474

Agency No. A079-519-306

MEMORANDUM*

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

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Joel Sosa Elizondo, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings based on ineffective assistance of counsel. We have

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and review de novo questions of law, including claims of due process violations due to ineffective assistance of counsel.

Mohammed v. Gonzales, 400 F.3d 785, 791-92 (9th Cir. 2005). We grant the petition for review and remand.

The BIA abused its discretion in basing its prejudice inquiry on a heightened standard where it concluded that petitioner failed to demonstrate that the result in the case “would have changed.” *See Maravilla Maravilla v. Ashcroft*, 381 F.3d 855, 858-59 (9th Cir. 2004) (per curiam) (BIA abused its discretion by analyzing prejudice under too stringent a standard where “[i]t should have asked only whether [prior counsel’s] . . . performance may have affected the proceedings”). We therefore remand for further proceedings. *See id.*

PETITION FOR REVIEW GRANTED; REMANDED.