

APR 29 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUAN FIGUEROA,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

No. 07-74448

Agency No. A041-328-097

MEMORANDUM*

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

Argued and Submitted April 13, 2010
San Francisco, California

Before: KLEINFELD, TASHIMA, and THOMAS, Circuit Judges.

Petitioner seeks review of the Board of Immigration Appeals' ("BIA") October 2007 order denying his motion to reopen his deportation proceedings based on ineffective assistance of counsel. We have jurisdiction pursuant to 8 U.S.C. § 1252. We grant the petition for review and remand to the BIA for reconsideration of petitioner's motion to reopen.

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

Because the government agrees that the matter should be remanded to the BIA on an open record for full reconsideration of petitioner's motion to reopen, we do not reach any of the discrete issues raised by either party. On remand, the BIA will consider all issues the parties have raised, including whether petitioner is entitled to equitable tolling of the deadline for filing his motion to reopen, whether counsel's failure to argue during petitioner's deportation proceedings that petitioner's conviction did not amount to an aggravated felony in light of *United States v. Rivera-Sanchez*, 247 F.3d 905 (9th Cir. 2001) (en banc), amounted to ineffective assistance of counsel, and whether counsel's failure to file a motion to reopen based on petitioner's alleged back injury amounted to ineffective assistance of counsel.

PETITION FOR REVIEW GRANTED; REMANDED.