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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>REY PARRA-SANTOS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-73537

Agency No. A076-705-185

MEMORANDUM*

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

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Rey Parra-Santos, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen proceedings to apply for adjustment of status. We have jurisdiction under 8 U.S.C.

* 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).

§ 1252. Reviewing for abuse of discretion, *Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003), we grant the petition for review.

The BIA abused its discretion in denying Parra-Santos' motion to reopen where the record establishes that he did submit the August 6, 2005, approval notice of his immigrant visa petition filed on his behalf by his United States citizen spouse, and this constitutes sufficient evidence of the bona fides of his marriage. *See* 8 C.F.R. § 1245.1(c)(8)(v) (2008) (an approved immigrant visa petition "will be considered primary evidence of eligibility for the bona fide marriage exemption").

PETITION FOR REVIEW GRANTED; REMANDED.