

JUN 09 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

REYNA MACIAS,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-70228

Agency No. A079-394-965

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.

Reyna Macias, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an

* 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).

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.

The BIA concluded that Macias's conviction for being under the influence of a controlled substance pursuant to Cal. Health & Safety Code § 11550 rendered her ineligible for relief from removal. The BIA, however, did not have the benefit of our intervening decision in *Rice v. Holder*, 597 F.3d 952, 957 (9th Cir. 2010), which held that an individual convicted in state court of using or being under the influence of a controlled substance and whose conviction is subsequently expunged is eligible for the same immigration treatment as individuals convicted of drug possession under the Federal First Offender Act.

We therefore remand for the BIA to reconsider Macias's eligibility for relief from removal. *See generally INS v. Ventura*, 537 U.S. 12, 16-18 (2002).

PETITION FOR REVIEW GRANTED; REMANDED.