

JUN 09 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NICACIO SAUSTEGUI-NAVA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-74285

Agency No. A070-132-030

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.

Nicacio Saustegui-Nava, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for cancellation of removal.

* 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).

We have jurisdiction under 8 U.S.C. §1252. We grant the petition for review and remand.

The agency incorrectly concluded that the Notice to Appear (“NTA”) ended Saustegui-Nava’s accrual of physical presence where the NTA failed to specify the time and date of his hearing. *See Garcia-Ramirez v. Gonzales*, 423 F.3d 935, 937 n.3 (9th Cir. 2005) (per curiam) (where NTA failed to specify the hearing date or location, accrual of physical presence ended upon service of proper hearing notice); *see also Popa v. Holder*, 571 F.3d 890, 896 (9th Cir. 2009).

We remand for the agency to determine whether Saustegui-Nava meets the other requirements for cancellation of removal.

The parties shall bear their own costs for this petition for review.

PETITION FOR REVIEW GRANTED; REMANDED.