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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARCO MARTINEZ-SEREN,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 09-71780

Agency No. A200-115-388

MEMORANDUM*

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

Argued and Submitted August 2, 2010
Seattle, Washington

Before: CANBY, NOONAN and BERZON, Circuit Judges.

Marco Martinez-Seren petitions for review of a decision of the Board of Immigration Appeals (“BIA”) overturning an immigration judge’s (“IJ”) grant of asylum and withholding of removal. *See* 8 U.S.C §§ 1158 and 1231(b)(3).

Martinez-Seren claims that he fled his homeland of Honduras because of persecution by the Mara Salvatrucha criminal gang on account of his membership

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

in a particular social group defined in part by membership in his family and in part by his and his sister's reporting the gang to the police. The IJ agreed, granting Martinez-Seren asylum and withholding of removal. The Department of Homeland Security ("DHS") appealed the IJ's decision to the Board of Immigration Appeals ("BIA"), which reversed.

Before the BIA, both parties in their briefs addressed the question of whether Martinez-Seren's membership in his family, in addition to his act of reporting the gang to the police, gave rise to a cognizable particular social group. *See* DHS Br. to BIA 13-17; Pet. Br. to BIA 9-14. The BIA, however, in overturning the IJ's decision, focused on Martinez-Seren's act of reporting the gang to the police, equating his particular social group with "[p]ersons who resist gangs" In so characterizing Martinez-Seren's claim, the BIA failed to address the family aspect of Martinez-Seren's proposed particular social group. The BIA is "not free to ignore arguments raised by a petitioner." *Sagaydak v. Gonzales*, 405 F.3d 1035, 1040 (9th Cir. 2005). The family aspect of Martinez-Seren's proposed particular social group was particularly relevant in light of record evidence that the gang targeted members of Martinez-Seren's family in addition to him and his sister. Accordingly, we grant the petition for review, vacate the BIA's decision, and remand Martinez-Seren's case to the BIA so that it may adequately consider the

family aspect of Martinez-Seren's particular social group and any other issues that thereby arise.

PETITION FOR REVIEW GRANTED; VACATED and REMANDED.