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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DAMIEN ANTONIO SAWYERS, etc.

Petitioner,

v.

ERIC H. HOLDER JR., Attorney General,

Respondent.

No. 08-70181

Agency No. A044-852-478

MEMORANDUM*

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

Submitted October 8, 2010**
San Francisco, California

Before: BEEZER and GRABER, Circuit Judges, and CARNEY,** District Judge.

Petitioner Damien Antonio Sawyers petitions for review of the Board of
Immigration Appeal's dismissal of his appeal from the immigration judge's denial

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

*** The Honorable Cormac J. Carney, United States District Judge for the Central District of California, sitting by designation.

of his request for cancellation of removal under 8 U.S.C. § 1229b(a)(1). We grant the petition.

Petitioner argues that, pursuant to Cuevas-Gaspar v. Gonzales, 430 F.3d 1013 (9th Cir. 2005), we must impute to him his mother's residency for purposes of cancellation of removal. In its response brief, the government argued that our decision in Cuevas-Gaspar no longer controls. As the government concedes in its Federal Rule of Appellate Procedure 28(j) letter to this court, however, we thereafter rejected those same arguments in Mercado-Zazueta v. Holder, 580 F.3d 1102 (9th Cir. 2009).

Accordingly, we grant the petition and remand on an open record for any further determinations that the BIA deems necessary, including a determination of when imputation should start. See INS v. Orlando Ventura, 537 U.S. 12 (2002) (per curiam); Soto-Olarte v. Holder, 555 F.3d 1089 (9th Cir. 2009). The agency must make findings in the first instance regarding the residency of Petitioner's mother and regarding whether Petitioner was a minor residing with her.

Petition GRANTED. Case REMANDED.