

OCT 25 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MEHRAN SAIDI,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 08-71706

Agency No. A044-158-554

MEMORANDUM*

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

Submitted October 19, 2010**

Before: O’SANNLAIN, TALLMAN, and BEA, Circuit Judges.

Mehran Saidi, a native and citizen of Iran, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s removal order. We have jurisdiction under 8 U.S.C. § 1252. We review de novo

* 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).

questions of law. *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1158-59 (9th Cir. 2009).

We grant the petition for review and remand.

The agency concluded that Saidi's conviction for violating Cal. Penal Code § 273.5(a) was for "an offense referred to in" 8 U.S.C. § 1182(a)(2) which stopped his accrual of the seven years of continuous residence needed to be eligible for cancellation of removal relief under 8 U.S.C. § 1229b(a). *See* 8 U.S.C. § 1229b(d)(1)(B). However, the agency erred in concluding that Saidi's misdemeanor conviction did not qualify for the "petty offense" exception under 8 U.S.C. § 1182(a)(2)(A)(ii)(II). *See* Cal. Penal Code § 17(b)(4); *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 844-46 (9th Cir. 2003). We therefore remand for the agency to reconsider Saidi's eligibility for cancellation of removal.

In light of our disposition, we do not reach Saidi's remaining contentions.

PETITION FOR REVIEW GRANTED; REMANDED.