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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MAYRA ROXANA CRUZ-CARBALLO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-72199

Agency No. A074-426-129

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges.

Mayra Roxana Cruz-Carballo, a native and citizen of El Salvador, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order dismissing her appeal from an immigration judge’s removal order. We have jurisdiction under

* 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).

8 U.S.C. § 1252. We review de novo questions of law, *Khan v. Holder*, 584 F.3d 773, 776 (9th Cir. 2009), and we grant the petition for review.

The BIA failed to address Cruz-Carballo’s contention that she is eligible for special rule cancellation of removal under 8 C.F.R. § 1240.66(c), which implements the provision of the Nicaraguan Adjustment and Central American Relief Act of 1997 (“NACARA”) authorizing relief for otherwise eligible aliens who are removable due to certain criminal convictions. *See* NACARA § 203(b). Although both parties discuss Cruz-Carballo’s eligibility for this relief in their briefing, because “this court cannot affirm the BIA on a ground upon which it did not rely,” *Navas v. INS*, 217 F.3d 646, 658 n.16 (9th Cir. 2000), we grant the petition for review and remand the case to the BIA to address Cruz-Carballo’s eligibility in the first instance. *See INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.