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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLOS MARTINEZ GUTIERREZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-70436

Agency No. A078-463-557

MEMORANDUM*

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

Submitted January 10, 2011**

Before: BEEZER, TALLMAN, and CALLAHAN, Circuit Judges.

Carlos Martinez Gutierrez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order sustaining the government's appeal from an immigration judge's decision granting his application

* 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).

for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252, and we grant the petition for review and remand for further proceedings.

Because the BIA decided this case without the benefit of our decision in *Mercado-Zazueta v. Holder*, 580 F.3d 1102, 1113 (9th Cir. 2009) (“[F]or purposes of satisfying the five years of lawful permanent residence required under INA section 240A(a)(1), 8 U.S.C. § 1229b(a)(1), a parent’s status as a lawful permanent resident is imputed to the unemancipated minor children residing with that parent.”), we remand to the BIA to allow it to reconsider Martinez Gutierrez’s cancellation of removal application. *See generally INS v. Ventura*, 537 U.S. 12 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.