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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PABLO ENRIQUE PEREZ-GOMEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-73760

Agency No. A079-526-549

MEMORANDUM*

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

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Pablo Enrique Perez-Gomez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen to seek adjustment of status based on his marriage to a United States citizen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of

* 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).

discretion the denial of a motion to reopen, *Malhi v. INS* 336 F.3d 989, 993 (9th Cir. 2003), and we grant the petition for review and remand.

The BIA abused its discretion in concluding that the evidence Perez-Gomez presented with his June 11, 2008, motion to reopen failed to clearly and convincingly establish a bona fide marriage where the evidence demonstrated ample co-mingling of personal assets, co-habitation, and that Perez-Gomez had known his wife for at least five years prior to the marriage. *See Matter of Velarde-Pacheco*, 23 I. & N. Dec. 253, 256 (BIA 2002) (en banc).

We need not reach Perez-Gomez's remaining contention. We remand to the BIA for further proceedings consistent with this disposition.

PETITION FOR REVIEW GRANTED; REMANDED.