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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>TRUNG KHAC NGUEN, a.k.a. Trung Khac Nguyen,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>

Nos. 08-72108
09-71545

Agency No. A023-759-846

MEMORANDUM*

On Petitions for Review of Orders of the
Board of Immigration Appeals

Submitted February 15, 2011**

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

In these consolidated petitions for review, Trung Khac Nguen, a native and citizen of Vietnam, petitions for review of the Board of Immigration Appeals’ (“BIA”) orders dismissing his appeal from an immigration judge’s removal order and denying his subsequent motion to reopen. Our jurisdiction is governed by

* 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 for abuse of discretion the denial of a motion to reopen, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). In No. 08-72108, we grant the petition for review and remand. In 09-71545, we dismiss the petition review.

The agency determined that petitioner was removable under the aggravated felony ground of deportation, 8 U.S.C. § 1227(a)(2)(A)(iii), based on his 1986 conviction for violating California Penal Code § 288(a). Subsequent to the agency's decision in this case, we held in *Ledezma-Galicia v. Holder*, Nos. 03-73648, 04-35048, 2010 WL 5174979 (9th Cir. Dec. 22, 2010), that 8 U.S.C. § 1227(a)(2)(A)(iii) does not apply to convictions that occurred prior to November 18, 1988. We therefore grant the petition for review in No. 08-72108 and remand to the agency in light of *Ledezma-Galicia*.

In light of our remand, we do not reach case No. 09-71545.

**In No. 08-72108: PETITION FOR REVIEW GRANTED;
REMANDED.**

In No. 09-71545: PETITION FOR REVIEW DISMISSED.