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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>OSCAR NELSON GUZMAN,</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>

Nos. 05-76993
07-70498

Agency No. A092-704-303

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, O’SANNLAIN, and BYBEE, Circuit Judges.

In these consolidated petitions for review, Oscar Nelson Guzman, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’ (“BIA”) orders dismissing his appeal from an immigration judge’s removal order and denying his 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 BIA's denial of a motion to reopen and review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). In 05-76993, we grant the petition for review and remand. In 07-70498, we dismiss the petition for review.

In dismissing Guzman's appeal, the BIA failed to address his contention that he is eligible for adjustment of status in conjunction with a waiver under former 212(c), 8 U.S.C. § 1182(c) (repeal effective April 1, 1997), pursuant to *Matter of Azurin*, 23 I. & N. Dec. 695 (BIA 2005). We therefore grant the petition for review in No. 05-76993 and remand to the agency to consider this contention in the first instance. *See Brezilien v. Holder*, 569 F.3d 403, 412 (9th Cir. 2009) (BIA is not free to ignore arguments raised by a petitioner).

In light of our remand, we do not reach Guzman's remaining contentions related to the dismissal of his appeal or case No. 07-70498.

**In No. 05-76993: PETITION FOR REVIEW GRANTED;
REMANDED.**

In No. 07-70498: PETITION FOR REVIEW DISMISSED.