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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LUIS GUSTAVO FAJARDO-CHACON,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 09-70142

Agency No. A076-844-465

MEMORANDUM*

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

Submitted June 15, 2011**

Before: CANBY, O’SCANNLAIN, and FISHER, Circuit Judges

Luis Gustavo Fajardo-Chacon, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s (“IJ”) removal order and denying his motion to remand. 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 remand, review de novo questions of law, and review for substantial evidence the agency's factual findings. *Romero-Ruiz v. Mukasey*, 538 F.3d 1057, 1061-62 (9th Cir. 2008). We deny in part and grant in part the petition for review and remand.

Substantial evidence supports the agency's determination that Fajardo-Chacon is inadmissible under 8 U.S.C. § 1182(a)(6)(C)(i), and therefore ineligible for adjustment of status under 8 U.S.C. § 1255(i). *See Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995). The BIA therefore did not abuse its discretion in denying Fajardo-Chacon's motion to remand.

Because the IJ failed to determine whether Fajardo-Chacon had established past persecution in evaluating his asylum and withholding of removal claims, we remand for the agency to make this determination in the first instance. *See Yan Xia Zhu v. Mukasey*, 537 F.3d 1034, 1045 (9th Cir. 2008).

In light of our disposition, we need not reach Fajardo-Chacon's remaining contentions.

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW DENIED in part; GRANTED in part;
REMANDED.**