

AUG 06 2012

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KARINA PIMENTEL-ORNELAS,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
---

No. 09-70437

Agency No. A073-949-310

MEMORANDUM\*

On Remand From The United States Supreme Court

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.\*\*

Karina Pimentel-Ornelas petitions for review of the Board of Immigration Appeals’ (“BIA”) order upholding an immigration judge’s denial of cancellation of removal under 8 U.S.C. § 1229b(a). In our original decision, we relied on *Mercado-Zazueta v. Holder*, 580 F.3d 1102 (9th Cir. 2009), to hold that Pimentel-Ornelas could impute her father’s legal status to herself to meet the five-year

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* Following the death of Judge Pamela Ann Rymer, Judge Harry Pregerson was drawn to replace Judge Rymer on the panel.

lawful permanent residence requirement under 8 U.S.C. § 1229b(a)(1). We therefore granted the petition for review. *Pimentel-Ornelas v. Holder*, 432 F. App'x 681 (9th Cir. 2011) (unpublished). The Supreme Court granted certiorari, vacated our decision, and remanded for reconsideration in light of *Holder v. Martinez Gutierrez*, 132 S. Ct. 2011, 2017 (2012). *See Holder v. Pimentel-Ornelas*, 132 S. Ct. 2680 (2012).

Because *Mercado-Zazueta* is no longer valid precedent on the issue of imputation under 8 U.S.C. § 1229b, *see Sawyers v. Holder*, — F.3d —, 2012 WL 2507513 (9th Cir. June 29, 2012) (per curiam), we now reject Pimentel-Ornelas' imputation argument concerning her father's lawful permanent residence.

We remand, however, for the BIA to address in the first instance Pimentel-Ornelas' contention that she had accrued five years of lawful permanent residence by the time the BIA issued its decision. *See Sinotes-Cruz v. Gonzales*, 468 F.3d 1190, 1197 (9th Cir. 2006) ("stop time" provision at 8 U.S.C. § 1229b(d)(1) does not apply to five-year requirement of § 1229b(a)(1)).

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