

MAY 28 2014

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OWEN AUGUSTUS FAGAN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 12-73959

Agency No. A023-723-116

MEMORANDUM*

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

Submitted May 13, 2014**

Before: CLIFTON, BEA, and WATFORD, Circuit Judges.

Owen Augustus Fagan, a native and citizen of Jamaica, petitions for review of an order of the Board of Immigration Appeals (“BIA”) affirming a decision of an immigration judge (“IJ”) denying his application for cancellation of removal and his request for a continuance. We have jurisdiction under 8 U.S.C. § 1252.

* 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).

Reviewing de novo questions of law, *Doissaint v. Mukasey*, 538 F.3d 1167, 1170 (9th Cir. 2008), we grant the petition for review and remand the matter to the BIA for further proceedings consistent with our disposition.

The agency erred by failing to consider Fagan’s properly raised and briefed request for a waiver of inadmissibility pursuant to former section 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1182(c) (1996). *See id.* (“IJs and the BIA are not free to ignore arguments raised by a petitioner.” (citation omitted)). Accordingly, we remand the matter to the agency for it to address this issue in the first instance. *See Casares-Castellon v. Holder*, 603 F.3d 1111, 1113 (9th Cir. 2010) (per curiam) (remanding a case to the agency for a merits determination in the first instance).

PETITION FOR REVIEW GRANTED; REMANDED.