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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EBER BALAN-BARRERA,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-73108

Agency No. A201-289-877

MEMORANDUM*

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

Submitted November 16, 2016**

Before: LEAVY, BERZON, and MURGUIA, Circuit Judges.

Eber Balan-Barrera, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals (“BIA”) order denying his motion to reopen removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review for

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

abuse of discretion the denial of a motion to reopen. *Singh v. Holder*, 771 F.3d 647, 650 (9th Cir. 2014). We grant the petition for review and remand.

Balan-Barrera moved to reopen so that he could pursue an I-601A provisional waiver of inadmissibility pursuant to 8 C.F.R. § 212.7(e). At that time, an individual who had been in removal proceedings was eligible for the waiver only if the agency had administratively closed proceedings, instead of entering a removal order. *See* 8 C.F.R. § 212.7(e)(4) (2013).

The BIA correctly noted that Balan-Barrera's final order of removal rendered him ineligible for the waiver. However, the BIA abused its discretion in denying Balan-Barrera's motion to reopen because it appears not to have considered whether he was entitled to reopening as a matter of discretion. *See* 8 C.F.R. § 1003.2(a); *Singh*, 771 F.3d at 653 (the BIA's denial of a motion to reopen on jurisdictional grounds was legal error, and thus an abuse of discretion, because it had authority to reopen under 8 C.F.R. § 1003.2(a)). We therefore grant the petition and remand for further proceedings.

PETITION FOR REVIEW GRANTED; REMANDED.