

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 6 2020

FOR THE NINTH CIRCUIT

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

ELEUTERIO REYES VASQUEZ,

No. 17-70129

Petitioner,

Agency No. A096-061-860

v.

MEMORANDUM*

WILLIAM P. BARR, Attorney General,

Respondent.

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

Submitted January 22, 2020**
Pasadena, California

Before: RAWLINSON, LEE, and BRESS, Circuit Judges.

Eleuterio Reyes Vasquez petitions for review of the Board of Immigration Appeals' reversal of the Immigration Judge's decision to grant his application for cancellation of removal. We agree that the Immigration Judge erred, so we deny the petition.

* 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).

First, the government argues that we lack jurisdiction because the BIA remanded the case for further consideration. But because the BIA remanded only to address issues regarding voluntary departure, this court has jurisdiction. *See Rizo v. Lynch*, 810 F.3d 688, 691 (9th Cir. 2016).

Second, issue preclusion does not apply to the prior Immigration Judge's statement that Reyes's domestic violence conviction did not disqualify him from relief. The previous oral decision concluded that Reyes failed to show the requisite hardship for cancellation of removal. The prior Immigration Judge's short, one-sentence comment in the oral decision that Reyes's prior conviction did not disqualify him from relief had no relation to the ultimate conclusion about lack of demonstrated hardship. Thus, even assuming that the prior proceeding is a final judgment for preclusion purposes despite being reopened, the issue of whether the prior conviction for domestic violence disqualified Reyes from relief was not necessarily decided because "its determination was merely incidental to the judgment in the prior action." *Resolution Tr. Corp. v. Keating*, 186 F.3d 1110, 1115 (9th Cir. 1999). Therefore, issue preclusion did not apply.

PETITION FOR REVIEW DENIED.