

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 11 2008

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

JAMSHID ZERAFAT,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 04-72828

Agency No. A41-708-245

MEMORANDUM\*

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

Submitted June 18, 2008\*\*

Before: REINHARDT, W. FLETCHER, and CLIFTON, Circuit Judges.

Jamshid Zerafat, a native and citizen of Iran, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an

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

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

immigration judge's ("IJ") decision denying his application under 8 U.S.C. § 1186a(c)(4)(B) for a waiver of the requirement that he and his wife file a joint petition to remove the conditional status of his lawful permanent residence. We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review.

Zerafat contends that the IJ violated his due process rights by aggressively examining him. Although Zerafat raised this claim before the BIA, the BIA failed to address it. We therefore remand for further proceedings. *See Montes-Lopez v. Gonzales*, 486 F.3d 1163, 1165 (9th Cir. 2007) ("When a petitioner raises a claim based on a purported procedural defect of the proceedings before the IJ, the *only* administrative entity capable of independently addressing that claim is the BIA."); *see also INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

In light of our disposition, we decline to reach the issue of Zerafat's eligibility for a good faith marriage waiver.

**PETITION FOR REVIEW GRANTED; REMANDED.**