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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ANITA DOCENA GINOCCHIO,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 04-71894

Agency No. A76-274-955

MEMORANDUM\*

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

Submitted April 11, 2008\*\*  
Pasadena, California

Before: GOODWIN, PREGERSON, and D.W. NELSON, Circuit Judges.

Anita Docena Ginocchio (“Ginocchio”) petitions for review of a decision by the Board of Immigration Appeals (“BIA”) that denied her application for adjustment of status and ordered her removed. The parties are familiar with the

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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).

facts of the case and we repeat them here only to the extent necessary to explain our decision. We have jurisdiction under 8 U.S.C. § 1252, and we grant Ginocchio's petition for review.

In *Choin v. Mukasey*, \_\_\_ F.3d \_\_\_ (9th Cir. 2008), we addressed the proper interpretation of § 245(d) of the Immigration and Naturalization Act ("INA"). We held that INA § 245(d) does not make K visaholders automatically ineligible to adjust to conditional permanent resident status if they get divorced before their application for adjustment of status is adjudicated. We apply that holding here. Like the petitioner in *Choin*, Ginocchio married the person who filed the K visa petition on her behalf (her fiancé), and applied for adjustment of status based on that marriage. Thus, the BIA erred in concluding that Ginocchio's divorce made her ineligible for adjustment of status. We GRANT Ginocchio's petition and REMAND to the BIA for further proceedings consistent with this disposition.

**PETITION GRANTED and REMANDED.**