

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 31 2008

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

GERARDO P. GARCIA; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-74914

Agency Nos. A72-525-770
A72-525-773

MEMORANDUM*

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

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Gerardo P. Garcia, and his son, natives and citizens of the Philippines, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an Immigration Judge's decision denying their

* 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).

application for asylum and withholding of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence. *Chebchoub v. INS*, 257 F.3d 1038, 1042 (9th Cir. 2001).

We grant the petition with regard to asylum because, as the government concedes, the BIA improperly found that Garcia's asylum application was untimely. Garcia applied for asylum in 1994, which was before the deadlines imposed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 were enacted. *Reyes-Reyes v. Ashcroft*, 384 F.3d 782, 786 (9th Cir. 2004); *see* 8 C.F.R. § 1208.4(a)(2)(ii).

The BIA also erred by finding that there was no nexus because it did not consider Garcia's claim under a mixed-motive analysis. *See Borja v. INS*, 1175 F.3d 732, 737 (9th Cir. 1999) (en banc); *Tarubac v. INS*, 182 F.3d 1114, 1117 (9th Cir. 1999). Accordingly, we grant and remand the petition for review.

PETITION FOR REVIEW GRANTED; REMANDED.