

DEC 10 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AURORA MONTELONGO,

Petitioner,

v.

MICHAEL B. MUKASEY,** Attorney
General,

Respondent.

No. 06-73243

Agency No. A90-079-046

MEMORANDUM*

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

Submitted December 3, 2007***

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

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

** Michael B. Mukasey is substituted for his predecessor, Alberto R. Gonzales, as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

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

Aurora Montelongo, a native and citizen of Mexico and lawful permanent resident of the United States, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's decision finding her removable for participating in alien smuggling. We have jurisdiction under 8 U.S.C. § 1252. "Although we review for reasonable, substantial, and probative evidence in the record as a whole, we affirm only if the [agency] has successfully carried this heavy burden of clear, unequivocal, and convincing evidence." *Hernandez-Guadarrama v. Ashcroft*, 394 F.3d 674, 679 (9th Cir. 2005) (internal quotations omitted). We grant the petition for review and remand.

The BIA found that Montelongo's transportation of aliens already within the United States constituted participation in a prearranged plan to smuggle the aliens into the United States. On the record before us, we cannot determine whether Montelongo's participation began before the act of smuggling ceased. *See Urzua Covarrubias v. Gonzales*, 487 F.3d 742, 748 (9th Cir. 2007). Accordingly, we remand for further proceedings to resolve this issue.

PETITION FOR REVIEW GRANTED; REMANDED.