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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

LUIS CARRILLO-ESTRADA,

Petitioner,

v.

MICHAEL B. MUKASEY,  
United States Attorney General,

Respondent.

No. 02-72230

Agency No. A92-339-356

MEMORANDUM\*

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

Submitted October 22, 2007\*\*\*

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

Luis Carrillo-Estrada, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order affirming without

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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).

opinion an immigration judge's ("IJ") order pretermitted his application for cancellation of removal on the ground that he is barred from establishing good moral character. We have jurisdiction under 8 U.S.C. § 1252(a)(1) to review whether an alien's conduct falls within a per se exclusion category for purposes of eligibility for cancellation of removal, *see Moran v. Ashcroft*, 395 F.3d 1089, 1091 (9th Cir. 2005), and we review findings of fact for substantial evidence, *id.* at 1091. We grant in part and dismiss in part the petition for review, and remand for further proceedings.

The IJ concluded that Carrillo-Estrada was statutorily ineligible for cancellation of removal, based on his testimony that he paid a smuggler to assist his wife to enter the United States without inspection. The agency did not have the benefit, however, of this court's decision in *Moran*. *See* 395 F.3d at 1093-94 (stating that "the alien-smuggling provision...does not operate to deny the applicant statutory eligibility...for cancellation of removal...because the Attorney General may waive the applicability of the alien-smuggling provision" when the applicant assisted his or her spouse or child to enter the United States in violation of the law). Under *Moran*, Carrillo-Estrada is eligible for a family unity waiver, and the agency improperly pretermitted his application for cancellation of removal. *See id.*

In accordance with *INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam), we remand for further proceedings consistent with this decision.

Petitioner's motion to remand is dismissed as moot.

**PETITION FOR REVIEW DISMISSED in part; GRANTED in part;  
REMANDED.**