

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 28 2008

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

SALVADOR DIAZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

Nos. 06-70839

06-72606

Agency No. A76-726-471

MEMORANDUM*

On Petitions for Review of Orders of the
Board of Immigration Appeals

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

In these consolidated petitions, Salvador Diaz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' orders dismissing his appeal from an immigration judge's ("IJ") decision denying his

* 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 cancellation of removal, and denying his motion to reopen.

We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence the agency's continuous physical presence determination. *Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 850-51 (9th Cir. 2004). In No. 06-70839, we grant the petition for review and remand. In No. 06-72606, we dismiss the petition for review.

Substantial evidence does not support the agency's determination that Diaz failed to demonstrate the requisite presence where Diaz testified that he entered the United States on September 15, 1987; his declaration and cancellation application reflect the September 15, 1987 entry date; he provided sworn affidavits from friends supporting a 1987 entry date; and the IJ found him to be credible. *See id.* at 852-53 (alien established continuous physical presence through testimony and documentary evidence despite certain inconsistencies in dates). We remand to the agency for further proceedings regarding Diaz's eligibility for cancellation of removal.

In light of our disposition, we need not reach the contentions in No. 06-72606.

**No. 06-70839: PETITION FOR REVIEW GRANTED;
REMANDED.**

No. 06-72606: PETITION FOR REVIEW DISMISSED.