

**AUG 26 2004**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

MARTHA MAURICIO-RIOS,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No.03-72016

Agency No. A74-320-398

MEMORANDUM\*

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

Submitted August 13, 2004\*\*  
San Francisco, California

Before: HAWKINS, THOMAS, and BEA, Circuit Judges.

Martha Maurico-Rios petitions for review of a decision of the Board of Immigration Appeals (“BIA”) affirming a decision by an immigration judge (“IJ”) denying her application for suspension of deportation. We grant the petition.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

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

Because the parties are familiar with the facts and procedural history of this case, we do not recite them here.

The government argues that a claim of ineffective assistance of counsel in removal proceedings cannot be raised where the underlying relief sought is suspension of deportation, asserting that there is no liberty interest protected by the due process clause of the Fifth Amendment in the discretionary remedy of suspension of deportation. This argument is foreclosed by Ninth Circuit precedent reaching ineffective assistance of counsel claims in precisely these circumstances. *E.g., Castillo-Perez v. INS*, 212 F.3d 518 (9th Cir. 2000).

The BIA denied petitioner's motion to remand based on ineffective assistance of counsel solely on the ground that she had not established prejudice, stating that she had not "establish[ed] that the outcome of this case would have been favorable . . . *but for* the attorney's misconduct." (emphasis added). However, to establish prejudice, she need only show that the ineffective assistance provided by her original counsel *may* have changed the outcome. *E.g., Castillo-Perez*, 212 F.3d at 527 n.12.

We therefore grant the petition for review and remand to the BIA to determine whether petitioner can establish prejudice under the proper standard.

**PETITION GRANTED.**