

OCT 14 2004

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

YUK CONNIE YIN LAU FUNG, aka Yuk
Connie Yin Au Fung,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 03-72042

Agency No. A43-523-444

MEMORANDUM*

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

Argued and Submitted October 7, 2004
Seattle, Washington

Before: KOZINSKI, FERNANDEZ, and CLIFTON, Circuit Judges.

Yuk Connie Yin Lau Fung, a citizen and native of Hong Kong, petitions for review of the Board of Immigration Appeals' (BIA) decision, which held that she

* 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.

was subject to removal because she had abandoned her lawful permanent resident status. We grant the petition.

Fung returned to Hong Kong due to her son's unusual medical difficulties, and her visit was one "*scheduled* to terminate upon the occurrence of an event having a reasonable possibility of occurring within a relatively short period of time." Chavez-Ramirez v. INS, 792 F.2d 932, 937 (9th Cir. 1986) (emphasis added). Because substantial evidence does not support the BIA's conclusion that the government established by clear, unequivocal, and convincing evidence that Fung failed to maintain a "continuous, uninterrupted intention" to return to the United States throughout her stay, her visit to Hong Kong was a "temporary visit abroad." Id.

PETITION GRANTED.