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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO PEREZ OLIVEROS,

Petitioner,

v.

MICHAEL B. MUKASEY,
United States Attorney General,

Respondent.

No. 04-71861

Agency No. A73-971-645

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.

Francisco Perez Oliveros, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (“BIA”) dismissing his appeal from an immigration judge’s (“IJ”) order denying his motion to reopen, and

* 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).

denying his “latest” motion to reopen filed with the BIA. We have jurisdiction pursuant to 8 U.S.C. § 1252, grant the petition for review, and remand for further proceedings.

In light of the IJ’s statement that Perez Oliveros’s suspension of deportation application was withdrawn “without prejudice,” as well as the absence in the record of a hearing transcript from April 14, 2003, we conclude that a remand is appropriate for the BIA to reconsider Perez Oliveros’s appeal with the benefit of that transcript. *See Recinos de Leon v. Gonzales*, 400 F.3d 1185, 1193-94 (9th Cir. 2005). We note that throughout the underlying proceedings the government took the position that “[t]he case should remain off the [immigration] court’s docket until a coherent diagnosis and prognosis [for Perez Oliveros’s United States citizen son] is filed.”

PETITION FOR REVIEW GRANTED; REMANDED.