

DEC 10 2007

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JULIO CESAR CALDERON-ALONSO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-72804

Agency No. A75-768-868

MEMORANDUM*

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

Submitted December 3, 2007**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Julio Cesar Calderon-Alonso, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' order affirming, without opinion, an Immigration Judge's decision denying his application for cancellation

* 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).

of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the agency's continuous physical presence determination for substantial evidence. *See Ibarra-Flores v. Gonzales*, 439 F.3d 614, 618 (9th Cir. 2006). We grant the petition for review and remand.

An intervening change in the law requires us to remand on the issue of continuous physical presence. In *Ibarra-Flores*, we held that administrative voluntary departure under threat of deportation breaks the accrual of continuous physical presence only where the alien is informed of the terms of the departure and knowingly and voluntarily accepts the terms of departure. *See id.* at 609; *see also Tapia v. Gonzales*, 430 F.3d 997, 1004 (9th Cir. 2005). There is no indication in the record that Calderon-Alonso was informed of the terms of his departure or that he accepted them voluntarily or knowingly, and the agency did not have the benefit of our decisions in *Ibarra-Flores* and *Tapia* at the time it addressed the issue.

Accordingly, we grant the petition for review and remand for further proceedings consistent with *Ibarra-Flores* and *Tapia*.

PETITION FOR REVIEW GRANTED; REMANDED.