

DEC 26 2008

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLEMENCIA D. JACKSON,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

Nos. 05-74226
05-76130

Agency No. A072-978-467

MEMORANDUM*

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

Submitted December 17, 2008**

Before: WALLACE, TROTT, and RYMER, Circuit Judges.

Clemencia D. Jackson, a native and citizen of the Philippines, petitions for review of two Board of Immigration Appeals (“BIA”) orders: the June 21, 2005 order affirming the BIA’s prior decision granting the government’s motion to

* 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).

reconsider; and the September 26, 2005 order denying Jackson’s motion to reconsider and reopen. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review de novo questions of law. *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1107 (9th Cir. 2003). We grant the petition for review in No. 05-74226 and remand, and dismiss the petition in No. 05-76130.

The BIA correctly determined that the immigration judge lacked jurisdiction over Jackson’s I-751 waiver because the Department of Homeland Security (“DHS”) had not yet adjudicated the application. *See* 8 C.F.R. §§ 1216.5(c), (f) (DHS has jurisdiction over waiver applications, and an alien may appeal an adverse decision in removal proceedings). As DHS never had the opportunity to adjudicate the application, however, we agree with Jackson’s contention that the BIA was required to remand her case under *Matter of Stowers*, 22 I. & N. Dec. 605, 613-14 (BIA 1999) (en banc).

In light of this disposition, we dismiss the petition in No. 05-76130.

No. 05-74226: PETITION FOR REVIEW GRANTED; REMANDED.

No. 05-76130: PETITION FOR REVIEW DISMISSED.