

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>LONG CHING YOA,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 05-76838

Agency No. A025-110-106

MEMORANDUM*

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

Submitted December 17, 2008**

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

Long Ching Yoa, a native and citizen of Cambodia, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's removal order. We have jurisdiction pursuant to 8 U.S.C.

* 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).

§ 1252. We review de novo whether an offense qualifies as an aggravated felony, *Ruiz-Morales v. Ashcroft*, 361 F.3d 1219, 1221 (9th Cir. 2004), and we grant the petition for review.

An intervening change in the law requires us to remand the petition because Yoa’s conviction for violating Cal. Penal Code § 261.5(c) is not categorically for “sexual abuse of a minor” under 8 U.S.C. § 1101(a)(43)(A), *Estrada-Espinoza v. Mukasey*, 546 F.3d 1147, 1159 (9th Cir. 2008) (en banc), and the modified categorical approach cannot be used to conform his conviction to the generic offense, *id.* at 1160. We therefore remand for the agency to consider Yoa’s applications for relief.

PETITION FOR REVIEW GRANTED; REMANDED.