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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MARGARITA GAZCA-SANCHEZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 05-70078

Agency No. A077-356-709

MEMORANDUM*

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

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Margarita Gazca-Sanchez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal

* 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).

from an immigration judge's removal order. We have jurisdiction under 8 U.S.C. § 1252, and we grant the petition for review and remand for further proceedings.

The BIA determined that Gazca-Sanchez's failure to provide her fingerprints before her removal hearing was a sufficient reason to deem her relief application abandoned. The BIA, however, did not have the benefit of our intervening decision in *Cui v. Mukasey*, 538 F.3d 1289 (9th Cir. 2008), which held that the denial of a continuance for fingerprint processing prior to April 2005 may be an abuse of discretion. We therefore remand for the BIA to reconsider its dismissal of Gazca-Sanchez's appeal. *See id.* at 1292-95; *see also Karapetyan v. Mukasey*, 543 F.3d 1118, 1129-32 (9th Cir. 2008).

In light of our disposition, we need not address Gazca-Sanchez's remaining contention.

Petitioner's counsel is reminded that unpublished dispositions filed before January 1, 2007, may not be cited to this court. *See* 9th Cir. R. 36-3(c).

PETITION FOR REVIEW GRANTED; REMANDED.