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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JESUS ORTEGA-GUILLEN,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-75656

Agency No. A096-385-959

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.

Jesus Ortega-Guillen, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for cancellation of removal.

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\* 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).

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

Substantial evidence does not support the agency's determination that Ortega-Guillen did not meet the continuous physical presence requirement where it is unclear whether Ortega-Guillen departed the United States due to an expedited removal order in 1999, and the record contains no such order. *Cf. Juarez-Ramos v. Gonzales*, 485 F.3d 509, 512 (9th Cir. 2007) (an expedited removal order interrupts an alien's continuous physical presence for cancellation purposes); *see also Ibarra-Flores*, 439 F.3d at 619 (inconclusive evidence along with absence of voluntary departure form does not amount to substantial evidence of ineligibility for cancellation of removal). Because the nature and terms of Ortega-Guillen's departure are unclear, we grant the petition for review and remand for further proceedings.

In light of our disposition, we need not reach Ortega-Guillen's remaining contentions.

**PETITION FOR REVIEW GRANTED; REMANDED.**