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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ARTASHES ARTUSHYAN,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 06-73006

Agency No. A071-400-805

MEMORANDUM*

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

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Artashes Artushyan, a native and citizen of Armenia, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum,

* 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).

withholding of removal, and protection under the Convention Against Torture. We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand.

The BIA determined that Artushyan's failure to submit his fingerprints was a sufficient reason to deny his application for relief. The BIA, however, did not have the benefit of our intervening decision in *Cui v. Mukasey*, 538 F.3d 1289, 1292-95 (9th Cir. 2008) (holding IJ's denial of petitioner's request for a continuance constituted an abuse of discretion where law governing fingerprint requirement was unclear and uncertain, and IJ did not warn petitioner that failure to submit new fingerprints in advance of merits hearing could result in pretermission of her claims). We therefore grant the petition for review and remand for the BIA to reconsider its dismissal of Artushyan's appeal. *See id.*; *see also Karapetyan v. Mukasey*, 543 F.3d 1118, 1129-32 (9th Cir. 2008) (reaching same result as in *Cui*).

In light of our disposition, we need not address Artushyan's due process contention.

PETITION FOR REVIEW GRANTED; REMANDED.