

MAY 07 2009

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JINGHAI LI,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

No. 04-73949

Agency No. A075-679-974

ORDER

Before: FERNANDEZ, CALLAHAN and IKUTA, Circuit Judges.

The memorandum disposition filed on January 5, 2009 is amended in one regard. The sentence:

Li's claim that he started to work on his application within one year of his entry does not excuse his failure to file within one year, and he failed to show extraordinary circumstances permitting tolling of the one year deadline.

on page 2, lines 7-10, is deleted and the following is inserted:

Li's claim that he started to work on his application within one year of his entry does not excuse his failure to file within one year, and the facts underlying Li's claim that extraordinary circumstances allow tolling of the one-year deadline are in dispute. *Cf. Husyev v. Mukasey*, 528 F.3d 1172, 1179 (9th Cir. 2008).

With this amendment, the panel has voted to deny the Petition for Rehearing. Judge Callahan and Judge Ikuta have voted to deny the Petition for Rehearing En Banc, and Judge Fernandez so recommends. The full court has been advised of the Petition for Rehearing En Banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The Petition for Rehearing and the Petition for Rehearing En Banc are DENIED. No further petitions shall be entertained.