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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN GARCIA-BARRETO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-73207

Agency No. A098-570-311

MEMORANDUM\*

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

Submitted October 13, 2009\*\*

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Juan Garcia-Barreto, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We

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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).

review for abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We grant the petition for review and remand.

The BIA abused its discretion by determining that Garcia-Barreto failed to present previously unavailable evidence because the record shows that the evidence concerning his son's conditions could not have been discovered prior to the hearing. *See* 8 C.F.R. § 1003.2(a)(c).

The BIA further abused its discretion by requiring a conclusive showing of the requisite hardship, *see Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003) (conclusive showing that eligibility for relief has been established not required), and by failing to consider all the evidence submitted, including the bi-polar disorder diagnosis, *see Mohammed v. Gonzales*, 400 F.3d 785, 792 (9th Cir. 2005) (failure to consider evidence submitted with motion constituted an abuse of discretion).

We remand for the BIA to reconsider Garcia-Barreto's motion to reopen under the correct standard and in light of all the evidence submitted.

**PETITION FOR REVIEW GRANTED; REMANDED.**