

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

OCT 30 2009

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

KWAN SU YI,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 08-71173

Agency No. A041-514-417

MEMORANDUM\*

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

Argued and Submitted October 15, 2009  
Seattle, Washington

Before: RAWLINSON and CALLAHAN, Circuit Judges, and BURNS,\*\* District  
Judge.

Petitioner Kwan Su Yi (“Yi”), a native and citizen of South Korea, petitions  
for review of the Board of Immigration Appeals’ (“BIA”) order holding him  
removable pursuant to 8 U.S.C. § 1227(a)(2)(E)(i) based on his 2003 conviction

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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 Honorable Larry A. Burns, U.S. District Judge for the Southern  
District of California, sitting by designation.

under Anchorage Municipal Code (“AMC”) § 8.10.010(B)(1) for domestic violence assault. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we grant the petition for review.<sup>1</sup>

Yi’s conviction under AMC § 8.10.010(B)(1) does not support his removal pursuant to section 1227(a)(2)(E)(i). To be removable under section 1227(a)(2)(E)(i), a conviction must qualify as (1) a “crime of violence” as defined under federal law (2) committed “against a person who has one of several enumerated domestic relationships with the perpetrator.” *Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121, 1124-25 (9th Cir. 2006) (en banc) (citing 8 U.S.C. § 1227(a)(2)(E)(i)) (internal quotation marks omitted). We determine whether a conviction is grounds for removal by applying the categorical and modified categorical approaches. *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1017 (9th Cir. 2005).

Under the categorical approach, Yi’s conviction does not support the charge of removability because AMC § 8.10.010(B)(1) prohibits both the “intentional” and “reckless” use of force against another, and is therefore broader than the federal definition of a “crime of violence.” *Fernandez-Ruiz*, 466 F.3d at 1130

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<sup>1</sup> The parties are familiar with the facts of this case, so we repeat them here only as necessary.

(noting that a crime of recklessness cannot meet the generic, federal definition of a “crime of violence”). Moreover, the limited documents in the record of conviction fail to establish whether Yi admitted to intentionally or recklessly assaulting his brother, thus failing to bring the conviction within the generic definition of a “crime of violence” under the modified categorical approach. *See United States v. Vidal*, 504 F.3d 1072, 1086-87 (9th Cir. 2007) (en banc) (explaining that the record of conviction must show that the plea “necessarily” rested on facts “identifying the offense as generic”). Accordingly, we grant Yi’s petition for review, reverse the BIA’s decision affirming the IJ’s order of removal, and remand to the BIA for disposition consistent with this decision.

**PETITION GRANTED AND REMANDED.**