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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ESTEBAN SOLANO CRUZ,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-74023

Agency No. A076-365-599

MEMORANDUM\*

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

Submitted August 20, 2009\*\*

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Esteban Solano Cruz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider. We have jurisdiction pursuant to 8 C.F.R. § 1252. We grant the

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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).

petition for review and remand for further proceedings.

An immigration judge determined that Solano Cruz's failure to resubmit his fingerprints far enough in advance of his hearing was sufficient reason to deny his application for cancellation of removal. The BIA denied reconsideration of its order dismissing the underlying appeal, concluding that Solano Cruz had adequate notice of the requirements for completing his application. The agency, however, did not have the benefit of our intervening decision in *Cui v. Mukasey*, 538 F.3d 1289 (9th Cir. 2008), which held that refusing to continue proceedings for fingerprint processing prior to April 2005 may be an abuse of discretion. We therefore remand for the BIA to reconsider its denial of Solano Cruz's motion. *See id.* at 1292-95; *see also Karapetyan v. Mukasey*, 543 F.3d 1118, 1129-32 (9th Cir. 2008).

In light of our disposition, we do not reach Solano Cruz's remaining contentions.

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW GRANTED; REMANDED.**