

OCT 25 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MEHRAN SAIDI,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 08-71706

Agency No. A044-158-554

MEMORANDUM\*

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

Submitted October 19, 2010\*\*

Before: O’SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

Mehran Saidi, a native and citizen of Iran, petitions for review of the Board of Immigration Appeals’ order dismissing his appeal from an immigration judge’s removal order. We have jurisdiction under 8 U.S.C. § 1252. We review de novo

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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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

questions of law. *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1158-59 (9th Cir. 2009).

We grant the petition for review and remand.

The agency concluded that Saidi's conviction for violating Cal. Penal Code § 273.5(a) was for "an offense referred to in" 8 U.S.C. § 1182(a)(2) which stopped his accrual of the seven years of continuous residence needed to be eligible for cancellation of removal relief under 8 U.S.C. § 1229b(a). *See* 8 U.S.C. § 1229b(d)(1)(B). However, the agency erred in concluding that Saidi's misdemeanor conviction did not qualify for the "petty offense" exception under 8 U.S.C. § 1182(a)(2)(A)(ii)(II). *See* Cal. Penal Code § 17(b)(4); *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 844-46 (9th Cir. 2003). We therefore remand for the agency to reconsider Saidi's eligibility for cancellation of removal.

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

**PETITION FOR REVIEW GRANTED; REMANDED.**