

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 17 2016

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

JOSE VARGAS-SAAVEDRA,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 11-71259

Agency No. A078-752-344

MEMORANDUM*

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

Argued and Submitted June 10, 2016
Seattle, Washington

Before: EBEL,** PAEZ, and BYBEE, Circuit Judges.

Jose Vargas-Saavedra petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying adjustment of status. We have jurisdiction under 8 U.S.C. § 1252. We

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable David M. Ebel, Senior Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

review de novo questions of law. *Garfias-Rodriguez v. Holder*, 702 F.3d 504, 512 n.6 (9th Cir. 2012) (en banc). We grant Vargas’s petition for review and remand.

The BIA erred in applying *In re Torres-Garcia*, 23 I. & N. Dec. 866 (BIA 2006), against Vargas retroactively. See *Acosta-Olivarria v. Lynch*, 799 F.3d 1271, 1275–77 (9th Cir. 2015). Like the petitioner in *Acosta-Olivarria*, Vargas applied for adjustment of status and paid fees in the window between our decision permitting petitioners like him to seek adjustment of status, see *Perez-Gonzales v. Ashcroft*, 379 F.3d 783, 789 (9th Cir. 2004), and the BIA’s first decision calling this line of cases into question, see *Torres-Garcia*, 23 I. & N. Dec. 866. It was thus reasonable for Vargas to rely on our decision in *Perez*. See *Acosta-Olivarria*, 799 F.3d at 1275–77.

There is no significant factual difference between Vargas’s situation and the one presented in *Acosta-Olivarria*; we thus conclude that the BIA’s holding in *Torres-Garcia* does not apply retroactively to bar Vargas’s application for adjustment. We remand to the BIA to adjudicate Vargas’s application for adjustment of status.

PETITION FOR REVIEW GRANTED; REMANDED.