NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JORGE D. MERCADO, aka Jorge David Mercado, Petitioner, v. LORETTA E. LYNCH, Attorney General, Respondent.	No. 13-70662 Agency No. A094-181-976 MEMORANDUM[*]

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

Argued December 11, 2015; Resubmitted August 9, 2016
San Francisco, California

Before: GRABER and WARDLAW, Circuit Judges, and MARQUEZ,[**] District
Judge.

Petitioner Jorge David Mercado, a native and citizen of El Salvador,

petitions for review of the Board of Immigration Appeals' ("BIA") decision

dismissing his appeal from an immigration judge's decision denying his

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[*]   This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

[**]   The Honorable Rosemary Marquez, United States District Judge for
the District of Arizona, sitting by designation.

applications for asylum, withholding of removal, and relief under the Convention

Against Torture. When Petitioner applied for asylum in 1995, he was a minor

child whose mother had been granted asylum. The child of an alien who is granted

asylum under 8 U.S.C. § 1158 "may, if not otherwise eligible for asylum under

this section, be granted the same status as the alien if accompanying, or following

to join, such alien." 8 U.S.C. § 1158(b)(3)(A). The government failed to process

Petitioner's asylum application until 2009, by which time Petitioner had reached

the age of 21 and married. We remand on an open record for the BIA to consider

whether Petitioner was entitled to derivative asylum pursuant to 8 U.S.C.

§ 1158(b)(3), or otherwise, when he applied for asylum in 1995, and whether he

should be granted asylum *nunc pro tunc* to that time. Because we remand for the

BIA to consider whether Petitioner should be granted asylum *nunc pro tunc*, we do

not reach the other issues raised in Petitioner's Petition for Review.

 PETITION FOR REVIEW GRANTED; REMANDED.