

JUL 27 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARMANDO GRIJALVA CUEN, AKA
Armando Cuen Grijalva,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-70970

Agency No. A013-676-269

MEMORANDUM*

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

Submitted July 21, 2015**

Before: CANBY, BEA, and MURGUIA, Circuit Judges.

Armando Grijalva Cuen, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his applications for cancellation of removal for certain lawful permanent residents and voluntary departure as a matter

* 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).

of discretion. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law and constitutional claims. *Coronado v. Holder*, 759 F.3d 977, 982 (9th Cir. 2014). We grant the petition for review and remand.

Before the BIA, Grijalva Cuen contended that, in determining that Grijalva Cuen did not warrant a favorable exercise of discretion, the IJ erred in considering alleged arrests and convictions for which there was no evidence in the record. The BIA did not address this contention nor clarify whether it considered such incidents in affirming the IJ's decision. We therefore remand for the BIA to clarify whether it considered as a negative factor in its discretionary analysis alleged arrests and convictions for which there was no evidence in the record and, if so, address Grijalva Cuen's contention that doing so was error. *See She v. Holder*, 629 F.3d 958, 963-64 (9th Cir. 2010) (remanding where "we lack the clairvoyance necessary to confidently infer the reasoning behind the BIA's conclusion"); *Hernandez v. Ashcroft*, 345 F.3d 824, 849 (9th Cir. 2003) (reviewing whether the BIA considered an impermissible factor in making a discretionary determination).

PETITION FOR REVIEW GRANTED; REMANDED.