

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 6, 2010

No. 07-61006

Lyle W. Cayce
Clerk

JOSE ANGEL CARACHURI-ROSENDO

Petitioner

v.

ERIC H. HOLDER, JR., U S ATTORNEY GENERAL

Respondent

Petition For Review of an Order
of the United States Board of Immigration Appeals

ON REMAND FROM THE SUPREME COURT
OF THE UNITED STATES

Before JONES, Chief Judge, and KING and ELROD, Circuit Judges.

PER CURIAM:

The Supreme Court reversed the decision of this court in *Carachuri-Rosendo v. Holder*, No. 09-60, ____ U.S. ____, 130 S. Ct. 2577. The consequence of the Court's action is that this petitioner was not ineligible for cancellation of removal based on his recidivist state misdemeanor conviction for drug possession. Because the state did not enhance his conviction based on the fact of a prior conviction, "he has not been 'convicted' under § 1229b(a)(3) of a 'felony punishable' as such 'under the Controlled Substances Act,' 18 USC § 924(c)(2)." *Id.* at ____ U.S. ____, 130 S. Ct. at 2589. Accordingly, this court

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must GRANT the petition for review and REMAND to the BIA for further proceedings to adjudicate the petition for cancellation of removal.

Petition Granted; Case Remanded.