

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 25 2008

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

GABRIEL MATIAS-ANTOLIN,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 06-74935

Agency No. A77-289-324

MEMORANDUM\*

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

Submitted March 18, 2008\*\*

Before: CANBY, T. G. NELSON, and BEA, Circuit Judges

Gabriel Matias-Antolin, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' denial of his motion to reconsider the dismissal as untimely of his appeal from an immigration judge's grant of voluntary

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

departure following his concession of removability. He contends that rare circumstances excuse the late filing of his appeal. Our jurisdiction is governed by 8 U.S.C. § 1252. We deny the petition for review.

Matias-Antolin contends that the Board erred in refusing to excuse the late filing of his notice of appeal because the day before it was due, he sent the notice of appeal by Express Mail, and he relied on the United States Postal Service's guarantee of next-day delivery. He argues that he did not send the notice of appeal earlier because he was working to obtain proof of the hardship his removal would cause his United States citizen son.

The Board did not abuse its discretion in concluding that Matias-Antolin failed to establish rare circumstances justifying an exception to the deadline for appeal. *See Oh v. Gonzales*, 406 F.3d 611, 613 (9th Cir. 2005) (concluding that petitioner established colorable claim for exception to time limit when notice of appeal was mailed well before deadline).

**PETITION FOR REVIEW DENIED.**