

FILED

OCT 2 2007

NOT FOR PUBLICATION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

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FLOR DE MARIA PENA-RODRIGUEZ,

Petitioner,

v.

PETER D. KEISLER,** Acting Attorney
General,

Respondent.

No. 05-75591

Agency No. A78-953-205

MEMORANDUM*

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

Submitted September 24, 2007***

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

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

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

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

Flor de Maria Pena-Rodriguez, a native and citizen of El Salvador, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying her motion to reconsider its order dismissing as untimely her appeal from an immigration judge's ("IJ") decision. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Oh v. Gonzales*, 406 F.3d 611, 612 (9th Cir. 2005), we grant in part and dismiss in part the petition for review, and remand.

In denying Pena-Rodriguez's motion to reconsider, the BIA incorrectly stated that it had no authority to extend the filing deadline for Pena-Rodriguez's appeal. *See id.* at 613. In light of this error, we cannot be certain that the BIA examined the facts of Pena-Rodriguez's case to determine whether she established "rare circumstances" sufficient to excuse the late filing. *See id.* We therefore remand to allow the BIA to exercise its discretion as to whether to accept Pena-Rodriguez's late-arriving notice of appeal. *See id.* at 614.

PETITION FOR REVIEW GRANTED; REMANDED.