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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JAIME JUAN ESTEBAN,</p> <p>Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p>Respondent.</p>

No. 06-74354

Agency No. A70-774-602

MEMORANDUM*

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

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Jaime Juan Esteban, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen proceedings to reissue its decision affirming an immigration judge’s (“IJ”) denial

* 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).

of asylum, withholding of removal, and cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004), we grant the petition and remand for further proceedings.

The BIA abused its discretion by failing to address the affidavit of Esteban's counsel which stated that neither he nor Esteban received the BIA's order affirming the IJ's denial of relief. *See Singh v. Gonzales*, 494 F.3d 1170, 1172 (9th Cir. 2007) (presumption of proper mailing created by transmittal cover letter may be overcome by evidence of non-receipt by a petitioner or his counsel). We remand for the BIA to review the rebuttal evidence in the first instance and to determine whether it is sufficient to overcome the presumption of delivery.

PETITION FOR REVIEW GRANTED; REMANDED.