

MAR 24 2008

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

NOT FOR PUBLICATION  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

MARIA CONCEPCION OLALIA,  
  
Petitioner,  
  
v.  
  
MICHAEL B. MUKASEY, Attorney  
General,  
  
Respondent.

No. 04-75630

Agency No. A73-417-784

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.

Maria Concepcion Olalia, a native and citizen of the Philippines, petitions for review of an order of the Board of Immigration Appeals (“BIA”) dismissing her appeal from an immigration judge’s decision denying her motion to reopen

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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).

proceedings in which she was ordered deported in absentia. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion, *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1187 (9th Cir. 2001) (en banc), and we grant the petition for review and remand.

The BIA abused its discretion by applying to Olalia's Order to Show Cause a presumption of proper delivery that applies only to notices of hearing. *See Chaidez v. Gonzales*, 486 F.3d 1079, 1085 (9th Cir. 2007). We remand for the BIA to apply the proper legal standard when determining whether the Department of Homeland Security met its burden of establishing proper service. *See generally INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam); *see also Chaidez*, 486 F.3d at 1087.

In light of our disposition, we need not address Olalia's contention regarding exceptional circumstances.

We grant Olalia's motion to supplement the record and instruct the clerk to file the documents received on May 26, 2005.

**PETITION FOR REVIEW GRANTED; REMANDED.**