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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SIAM MING HENG,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-71685

Agency No. A96-053-911

MEMORANDUM*

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

Submitted November 13, 2007**

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

Siak Ming Heng, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider

* 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).

its previous order dismissing as untimely Heng's appeal from an Immigration Judge's decision denying his application for asylum. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider. *See Oh v. Gonzales*, 406 F.3d 611, 612 (9th Cir. 2005). We grant the petition for review and remand.

The BIA dismissed Heng's appeal for lack of jurisdiction before our decision in *Oh v. Gonzales*, 406 F.3d 611 (9th Cir. 2005). We remand for the BIA to consider, in light of *Oh*, whether Heng demonstrated "rare circumstances" warranting consideration of his late appeal. *See id.* at 614 (granting and remanding where the appeal was late due to an Airborne Express error, and where the BIA's denial was "predicated entirely on its misconstruction of the jurisdictional nature of its own filing deadline"), *INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.