

NOV 27 2007

Madatian v. Gonzales, No. 04-70170

NOONAN, Circuit Judges Dissenting:

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

Chaidez v. Gonzales, decided since the briefing and oral arguments in this case, holds that a presumption of effective service applies when non-Order to Show Cause notices are sent to an alien at the alien's last known address, 486 F.3d 1079, 1085 (9th Cir. 2007). The BIA's May 23, 1997 decision to dismiss the Madatians' appeal of the IJ's denial of asylum and withholding of deportation was mailed to Gayane Madatian at 203 West Maple, Apt. 203, Glendale, California 91204, the last-known address for Kristine Madatian. Although the cover letter in the mailing addresses only Gayane Madatian, the caption in the enclosed decision lists Gayane, Kristine, and Vahe. It is worth noting that Kristine filed a notice of appeal to the BIA (AR 109) separately and two days before Gayane and Vahe filed a joint notice of appeal (AR 107). While this separate filing of the appeal to the BIA might justify separate service of process to Kristine and to Gayane and Vahe, the BIA decision, with Kristine's name in the caption, was in fact mailed to Kristine's last-known address. Moreover, all three Madatians jointly filed a petition for review of the BIA decision with this court on June 26, 1997 and then filed a motion to reinstate the petition for review on May 26, 1998 after this court granted the government's motion to dismiss the petition. That Kristine joined

Gayane and Vahe in appealing the BIA decision strongly suggests that she had in fact been served and received notice of the May 23, 1997 decision.