

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 06 2009

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

CUAHUTEMOC RAMOS LOPEZ, a.k.a.
Cuahutemoc R. Lopez,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-72439

Agency No. A092-674-136

MEMORANDUM*

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

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Cuahutemoc Ramos Lopez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal

* 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 conducted *in absentia*. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Salta v. INS*, 314 F.3d 1076, 1078 (9th Cir. 2002), we grant the petition for review and remand for further proceedings.

The BIA denied Lopez's motion to reopen primarily because Lopez did not submit a sworn affidavit that neither he, nor any responsible party residing at his address, received notice of his rescheduled hearing. Lopez's motion to reopen included an unsworn written statement from his mother, with whom Lopez lived, stating that Lopez did not receive notice of his rescheduled hearing, as well as circumstantial evidence of non-receipt. At the time of its decision, the BIA did not have the benefit of *Semiring v. Gonzales*, 499 F.3d 981, 988-990 (9th Cir. 2007) (holding that sufficient circumstantial evidence can overcome the presumption of effective service; petitioner is not required to submit a sworn affidavit alleging non-receipt). We therefore remand for reconsideration of Lopez's motion to reopen.

PETITION FOR REVIEW GRANTED; REMANDED.