

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 26 2009

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

JUE SHEN; JIANYONG YANG,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-74404

Agency Nos. A075-737-154
A075-737-155

MEMORANDUM*

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

Submitted May 12, 2009**

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

Jue Shen and Jianyong Yang, natives and citizens of China, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reissue the BIA's prior order. We review for abuse of discretion, *Lara-Torres v.*

* 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).

Ashcroft, 383 F.3d 968, 972 (9th Cir. 2004), *amended by* 404 F.3d 1105 (9th Cir. 2005), and we grant the petition and remand for further proceedings.

The BIA abused its discretion by failing to address the affidavit petitioners submitted to show that they did not receive the BIA's March 29, 2006 order. *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 counsel). We remand for the BIA to review the evidence in the first instance and to determine whether it is sufficient to overcome the presumption of mailing.

PETITION FOR REVIEW GRANTED; REMANDED.