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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIRIAM LOERA AQUINO,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 07-70284

Agency No. A095-500-710

MEMORANDUM\*

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

Submitted December 15, 2009\*

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Miriam Loera Aquino, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's ("IJ") decision denying her motion to reopen removal proceedings

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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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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 IJ denied Loera Aquino's motion to reopen based on failure to receive the hearing notice primarily because she had not initiated removal proceedings and had not appeared at any previous hearings. *See Salta*, 314 F.3d at 1079. The IJ therefore found that her sworn declaration did not suffice to overcome the presumption of effective service of her hearing notice. At the time of its decision, the agency did not have the benefit of our decision in *Sembiring v. Gonzales*, 499 F.3d 981, 988-90 (9th Cir. 2007) (holding that alien's statement overcame presumption of effective service where no prior hearings scheduled, and alien had no motivation to avoid hearing). We therefore remand for reconsideration of Loera Aquino's motion to reopen.

The government shall bear the costs for this petition for review.

**PETITION FOR REVIEW GRANTED; REMANDED.**