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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN MIGUEL FONSECA-VIDAURRE,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER Jr., Attorney General,</p> <p>Respondent.</p>

No. 07-72977

Agency No. A079-521-652

MEMORANDUM*

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

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Juan Miguel Fonseca-Vidaurre, a native and citizen of Peru, petitions for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reopen and reissue the BIA’s prior order. We have jurisdiction pursuant to 8

* 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).

U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen and review de novo claims of due process violations, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002), and we deny the petition for review.

The BIA did not abuse its discretion or violate due process in denying Fonseca-Vidaurre's motion to reissue, where it considered his evidence of non-receipt and properly concluded that it was insufficient to rebut the presumption of proper mailing. *See Singh v. Gonzales*, 494 F.3d 1170, 1172 (9th Cir. 2007) (BIA fulfills its statutory duty of service if a decision was properly mailed); *see also Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error to prevail on a due process claim).

PETITION FOR REVIEW DENIED.