

JUN 08 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANA EPIFANIA GONZALEZ
TALAMANTES,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-71537

Agency No. A096-360-451

MEMORANDUM*

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

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Ana Epifania Gonzalez Talamantes, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying her

* 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).

motion to reissue the BIA's prior order. We review for abuse of discretion, *Lara-Torres v. 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 declaration Gonzalez Talamantes submitted to show that she did not receive the BIA's November 22, 2006 order. *See Singh v. Gonzales*, 494 F.3d 1170, 1172 (9th Cir. 2007) (presumption of proper mailing created by transmittal of 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.