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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ALVARO PULIDO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-72486

Agency No. A070-784-076

MEMORANDUM*

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

Submitted May 24, 2011**

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Alvaro Pulido, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his motion to reopen removal proceedings held in absentia. We have jurisdiction under 8 U.S.C. § 1252. Reviewing for abuse of

* 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).

discretion, *Salta v. INS*, 314 F.3d 1076, 1078 (9th Cir. 2002), we grant the petition for review.

The agency abused its discretion in denying Pulido's motion to reopen where he rebutted the presumption of effective service by submitting sworn declarations explaining why he and his wife had not received the Notice to Appear ("NTA"), and the record did not contain proof of attempted delivery to Pulido's address. *See* 8 U.S.C. § 1229(c) (service of NTA by mail is sufficient if there is proof of attempted delivery to alien's last address); *Arrieta v. INS*, 117 F.3d 429, 432 (9th Cir. 1997) (letter by petitioner is substantial and probative evidence that may rebut presumption of effective service).

PETITION FOR REVIEW GRANTED; REMANDED.