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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSE GERMAN GARAY,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 10-70935

Agency No. A070-935-147

MEMORANDUM*

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

Submitted June 15, 2011**

Before: CANBY, O’SANNLAIN, and FISHER, Circuit Judges.

Jose German Garay, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order denying his motion to reissue its previous decision dismissing his appeal. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to

* 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).

reopen. *Hernandez-Velasquez v. Holder*, 611 F.3d 1073, 1077 (9th Cir. 2010).

We grant the petition for review and remand.

The BIA abused its discretion in denying Garay’s motion to reissue where it failed to address Garay’s evidence that he did not receive the BIA’s April 20, 2009, order dismissing his appeal. *See id.* (BIA must consider the “weight and consequences” of petitioner’s evidence of non-receipt). We remand for the BIA to address the evidence in the first instance. *See INS v. Ventura*, 537 U.S. 12, 17-18 (2002) (per curiam).

In light of our disposition, we do not address Garay’s remaining contentions.

PETITION FOR REVIEW GRANTED; REMANDED.