

OCT 01 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL RAMIREZ ROSETE;
MARGARITA CORTEZ DE RAMIREZ,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-73393

Agency Nos. A097-351-655
A097-351-658

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Daniel Ramirez Rosete and Margarita Cortez De Ramirez, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reissue. We have jurisdiction under 8 U.S.C. § 1252. Reviewing 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 by failing to specifically address petitioners' evidence that they did not receive notice of the BIA's September 28, 2007, order. *See Singh v. Gonzales*, 494 F.3d 1170, 1172-73 (9th Cir. 2007) (BIA is obligated to consider and address the evidence submitted by petitioner). We remand for the BIA to address petitioners' evidence of non-receipt in the first instance and determine whether it is sufficient to overcome the presumption of mailing. *See id.*

PETITION FOR REVIEW GRANTED; REMANDED.