

DEC 26 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ERNING RIANTI MURTININGRUM;
PANNIR CHELLVAM MURUGESU,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-75029

Agency Nos. A079-611-989
A079-611-990

MEMORANDUM*

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

Submitted December 17, 2008**

Before: GOODWIN, WALLACE, and TROTT, Circuit Judges.

Erning Rianti Murtiningrum, a native and citizen of Indonesia, and her
husband, Pannir Chellvam Murugesu, a native and citizen of Malaysia, petition for

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's ("IJ") decision denying her application for asylum and withholding of removal, and his application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We review de novo claims of constitutional violations in immigration proceedings, *see Ram v. INS*, 243 F.3d 510, 516 (9th Cir. 2001), and we deny the petition for review.

Petitioners' contention that due process requires their case be remanded to the BIA for clarification of the grounds upon which the BIA affirmed the IJ's decision is not persuasive where the BIA adopted and affirmed the IJ's decision in its entirety, citing *Matter of Burbano*. *See Abebe v. Gonzales*, 432 F.3d 1037, 1040 (9th Cir. 2005) (en banc) (stating that a *Burbano* affirmance signifies that the BIA has conducted an independent review of the record and has determined that its conclusions are the same as those articulated by the IJ).

Petitioners' contention that the BIA erred by engaging in fact finding is not persuasive, where the BIA did not make factual findings, but rather explained that the new evidence presented on appeal was neither new nor material. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (stating when the BIA may remand a case to the IJ).

PETITION FOR REVIEW DENIED.