

JAN 13 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ANZHELA KHACHERAYAN; et al.,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p style="text-align: center;">Respondent.</p>

No. 04-74566

Agency Nos. A075-648-582
A076-715-646

MEMORANDUM*

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

Submitted October 16, 2008**

Before: LEAVY, RYMER, and THOMAS, Circuit Judges.

Anzhela Khacherayan and her son, natives and citizens of Armenia, petition for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's order removing them from the United States. We

* 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).

have jurisdiction under 8 U.S.C. § 1252. Reviewing for substantial evidence, *Nakamoto v. Ashcroft*, 363 F.3d 874, 881 (9th Cir. 2004), we grant the petition for review and remand.

The government must present clear and convincing evidence to remove an alien. *See* 8 U.S.C. § 1229a(c)(3)(A). Here, the removal order proceeds from USCIS's termination of petitioners' asylee status. The termination of status reflected the government's view that, at the time she applied for asylum, lead petitioner knowingly misrepresented that her husband was dead. We find that the order of removal is not supported by substantial evidence.

We therefore grant the petition for review and remand to the BIA with instructions to vacate the order of removal and to remand to the IJ for further proceedings on asylum consistent with this disposition.

PETITION FOR REVIEW GRANTED; REMANDED.