

MAR 15 2012

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RAJESH RANI; AJAI PAL SINGH KANWAR,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
---

No. 07-72341

Agency Nos. A046-330-775  
A046-866-696

MEMORANDUM\*

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

Submitted March 6, 2012\*\*

Before: B. FLETCHER, REINHARDT, and TASHIMA, Circuit Judges.

Rajesh Rani and Ajai Pal Singh Kanwar, natives and citizens of India, petition for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen, and review de novo claims

---

\* 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).

of due process violations due to ineffective assistance of counsel. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We grant the petition for review and remand for further proceedings.

Contrary to the BIA's determination, petitioners were prejudiced by their former counsel's failure to present an asylum claim based on past harm to members of Rani's husband's family because petitioners had a plausible claim that this harm was on account of a protected ground. *See id.* at 794 (prejudice is established when counsel's errors "may have affected the outcome of the proceedings") (citation omitted). It follows that the BIA abused its discretion in denying petitioners' motion to reopen. We therefore grant the petition for review and remand to the BIA with instructions to reopen and remand the case to the immigration judge for further proceedings consistent with this disposition.

In light of our disposition, we need not address petitioners' remaining contentions.

**PETITION FOR REVIEW GRANTED; REMANDED.**