

JUL 30 2008

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KUMALASARI WAHJUDI; KEVIN
OSMOND MAN; KWONG TAK MAN,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-76216

Agency Nos. A77-856-743
A77-856-744
A77-856-745

MEMORANDUM *

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

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Kumalasari Wahjudi, her husband and son, all natives and citizens of
Indonesia, seek review of the Board of Immigration Appeals' ("BIA") order

* 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).

dismissing their appeal from an immigration judge's decision denying their application for asylum, withholding of removal and protection under Convention Against Torture. We have jurisdiction pursuant to 8 U.S.C. § 1252.

We review for substantial evidence, *see Sael v. Ashcroft*, 386 F.3d 922, 924 (9th Cir. 2004). We grant in part and deny in part the petition for review.

Because there is no evidence that BIA reviewed the petitioners' asylum and withholding claims, as petitioners requested in their brief to the BIA, pursuant to the disfavored group analysis set forth in *Sael v. Ashcroft* 386 F.3d 922 (9th Cir. 2004), we remand to the agency to determine *Sael's* application in this case. *See INS v. Ventura*, 537 U.S. 12, 16-17, (2002) (holding that when an agency has not reached an issue, the proper course is to remand to the agency in the first instance to address).

Substantial evidence supports the agency's conclusion that it is not more likely than not that Wahjudi will be tortured if returned to Indonesia. *See Singh v. Gonzales*, 439 F.3d 1100, 1113 (9th Cir. 2006).

**PETITION FOR REVIEW GRANTED in part and DENIED in part;
REMANDED.**