

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshall
United States Courthouse, 40 Foley Square, in the City of
New York, on the 6th day of January, two thousand twenty.

PRESENT:

DENNIS JACOBS,
PETER W. HALL,
CHRISTOPHER F. DRONEY,
Circuit Judges.

JATINDER SINGH,
Petitioner,
v.

17-2977
NAC

WILLIAM P. BARR, UNITED STATES
ATTORNEY GENERAL,
Respondent.

FOR PETITIONER: Anas J. Ahmed, Pannun The Firm,
P.C., Jackson Heights, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant
Attorney General; Leslie McKay,
Senior Litigation Counsel;
Christina P. Greer, Trial
Attorney, Office of Immigration
Litigation, United States
Department of Justice, Washington,
DC.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Petitioner Jatinder Singh, a native and citizen of India,
6 seeks review of an August 24, 2017, decision of the BIA
7 affirming a December 1, 2016, decision of an Immigration Judge
8 ("IJ") denying Singh's application for asylum, withholding of
9 removal, and relief under the Convention Against Torture
10 ("CAT"). *In re Jatinder Singh*, No. A206 088 347 (B.I.A. Aug.
11 24, 2017), *aff'g* No. A206 088 347 (Immig. Ct. N.Y. City Dec.
12 1, 2016). We assume the parties' familiarity with the
13 underlying facts and procedural history in this case.

14 Under the circumstances of this case, we have reviewed
15 the IJ's decision minus the findings the BIA declined to rely
16 on. *See Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d
17 520, 522 (2d Cir. 2005). The applicable standards of review
18 are well established. *See* 8 U.S.C. § 1252(b)(4)(B); *Hong Fei*
19 *Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018) (reviewing
20 adverse credibility determination under a substantial
21 evidence standard); *Gjerjaj v. Holder*, 691 F.3d 288, 292 (2d

1 Cir. 2012) (reviewing constitutional claims de novo).

2 Adverse Credibility Determination

3 The governing REAL ID Act credibility standard provides
4 as follows:

5 Considering the totality of the circumstances, and
6 all relevant factors, a trier of fact may base a
7 credibility determination on the demeanor, candor,
8 or responsiveness of the applicant or witness, . .
9 . the consistency between the applicant's or
10 witness's written and oral statements . . . , the
11 internal consistency of each such statement, the
12 consistency of such statements with other evidence
13 of record . . . , and any inaccuracies or falsehoods
14 in such statements, . . . or any other relevant
15 factor.

16
17 8 U.S.C. § 1158(b)(1)(B)(iii). "We defer . . . to an IJ's
18 credibility determination unless . . . it is plain that no
19 reasonable fact-finder could make such an adverse credibility
20 ruling." *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir.
21 2008); accord *Hong Fei Gao*, 891 F.3d at 76. Substantial
22 evidence supports the agency's determination that Singh's
23 claim of persecution by the Congress Party on account of his
24 membership in the Akali Dal Mann political party was not
25 credible.

26 First, Singh has waived any challenge to the IJ's
27 findings that his testimony was internally inconsistent and

1 inconsistent with his medical report regarding his injuries,
2 that there were discrepancies between his testimony and
3 application regarding who accompanied him to the police
4 station, and that his demeanor undermined his credibility.
5 *See Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir. 1998)
6 ("Issues not sufficiently argued in the briefs are considered
7 waived and normally will not be addressed on appeal.").

8 However, even if not waived, these findings provide
9 substantial support for the adverse credibility
10 determination. First, Singh's testimony was internally
11 inconsistent and inconsistent with the medical certificate
12 regarding whether he sustained visible injuries. Second,
13 Singh's application omits that a village council member and
14 his neighbor accompanied him to the police station. Third,
15 we defer to the IJ's demeanor finding, which is supported by
16 Singh's non-responsive answers on direct examination. *See*
17 *Jin Chen v. U.S. Dep't of Justice*, 426 F.3d 104, 113 (2d Cir.
18 2005) (granting deference to credibility findings based on an
19 applicant's demeanor, "in recognition of the fact that the
20 IJ's ability to observe the witness's demeanor places her in
21 the best position to evaluate whether apparent problems in

1 the witness's testimony suggest a lack of credibility or,
2 rather, can be attributed to an innocent cause such as
3 difficulty understanding the question"); *see also Tu Lin v.*
4 *Gonzales*, 446 F.3d 395, 400-01 (2d Cir. 2006) ("Evasiveness
5 is . . . one of the many outward signs a fact-finder may
6 consider in evaluating demeanor and in making an assessment
7 of credibility.").

8 Additionally, the agency reasonably concluded that
9 Singh's documentary evidence did not rehabilitate his
10 credibility. *See Biao Yang v. Gonzales*, 496 F.3d 268, 273
11 (2d Cir. 2007) ("An applicant's failure to corroborate his .
12 . . testimony may bear on credibility, because the absence of
13 corroboration in general makes an applicant unable to
14 rehabilitate testimony that has already been called into
15 question"). It was reasonable for the IJ to give diminished
16 weight to Singh's 2016 medical certificate because it was not
17 prepared contemporaneously with his 2013 hospitalization but
18 rather to support his application. *See Y.C. v. Holder*, 741
19 F.3d 324, 332 (2d Cir. 2013) ("We generally defer to the
20 agency's evaluation of the weight to be afforded an
21 applicant's documentary evidence"). The IJ also did not err

1 in giving diminished weight to affidavits from individuals
2 who were not subject to cross-examination. See *Matter of H-*
3 *L-H- & Z-Y-Z-*, 25 I. & N. Dec. 209, 215 (BIA 2010) (giving
4 diminished weight to letters from relatives because they were
5 from interested witnesses not subject to cross-examination),
6 *rev'd on other grounds by Hui Lin Huang v. Holder*, 677 F.3d
7 130 (2d Cir. 2012). Furthermore, as noted by the IJ, Singh
8 did not produce any country conditions evidence that Congress
9 Party members are targeting members of the Akali Dal Mann or
10 forcing them to join the Congress Party.

11 Given the discrepancies among Singh's testimony,
12 application, and medical document, Singh's demeanor, and lack
13 of reliable corroboration, substantial evidence supports the
14 adverse credibility determination. See 8 U.S.C.
15 § 1158(b)(1)(B)(iii); *Xiu Xia Lin*, 534 F.3d at 167. Because
16 Singh's claims were all based on the same factual predicate,
17 the adverse credibility determination is dispositive of
18 asylum, withholding of removal, and CAT relief. See *Paul v.*
19 *Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006).

20 Due Process Claim

21 Singh argues that his due process rights were violated

1 by the attorney for the Department of Homeland Security
2 ("DHS") interrupting his testimony during direct examination.
3 "To establish a violation of due process, an alien must show
4 that []he was denied a full and fair opportunity to present
5 h[is] claims," *Burger v. Gonzales*, 498 F.3d 131, 134 (2d Cir.
6 2007) (internal quotation marks and citations omitted), and
7 he must establish prejudice, *Miller v. Mukasey*, 539 F.3d 159,
8 164 (2d Cir. 2008). Singh has shown neither. He testified
9 at length at the hearing, and although the DHS attorney may
10 have interrupted the flow of his testimony, the interruptions
11 did not cause the non-responsive answers but instead
12 highlighted them for the IJ and put Singh on notice of
13 problems with his testimony.

14 For the foregoing reasons, the petition for review is
15 DENIED.

16 FOR THE COURT:
17 Catherine O'Hagan Wolfe,
18 Clerk of Court