

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 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 3rd day of February, two thousand twenty.

PRESENT: PIERRE N. LEVAL,
JOSÉ A. CABRANES,
RAYMOND J. LOHIER, JR.,
Circuit Judges,

NENGGUI WANG,

Petitioner,

17-3926-ag

v.

WILLIAM P. BARR, UNITED STATES ATTORNEY
GENERAL,

Respondent.

FOR PETITIONER:

Adedayo O. Idowu, Law Offices of
Adedayo O. Idowu, PLLC, New York,
NY.

FOR RESPONDENT:

Judith R. O'Sullivan, Trial Attorney,
Office of Immigration Litigation, Paul
Fiorino, Senior Litigation Counsel, Joseph
H. Hunt, Assistant Attorney General, U.S.
Department of Justice, Washington, DC.

Appeal from a November 14, 2017 order of the Board of Immigration Appeals.

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the petition for review be and hereby is **DENIED**.

Petitioner Nenggui Wang (“Wang”), a native and citizen of the People’s Republic of China, seeks review of a November 14, 2017 decision of the Board of Immigration Appeals (“BIA”) affirming a March 10, 2017 decision of an Immigration Judge (“IJ”) denying his applications for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”) on the grounds that Wang was not credible. *See In re Nenggui Wang*, No. A208 926 206 (B.I.A. Nov. 14, 2017), *aff’g* No. A208 926 206 (Immig. Ct. N.Y. City Mar. 10, 2017). We assume the parties’ familiarity with the underlying facts, procedural history of the case, and issues on appeal.

We have reviewed both the IJ’s and the BIA’s decisions “for the sake of completeness.” *Wangchuck v. Dep’t of Homeland Sec.*, 448 F.3d 524, 528 (2d Cir. 2006). The applicable standards of review are well established. *See* 8 U.S.C. § 1252(b)(4)(B); *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018) (reviewing adverse credibility determination for substantial evidence). Specifically, the relevant statute provides:

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant . . . , the consistency between the applicant’s . . . written and oral statements . . . , the internal consistency of each such statement, [and] the consistency of such statements with other evidence of record . . . without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim

8 U.S.C. § 1158(b)(1)(B)(iii). “We defer . . . to an IJ’s credibility determination unless, from the totality of the circumstances, it is plain that no reasonable fact-finder could make such an adverse credibility ruling.” *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008); *accord Hong Fei Gao*, 891 F.3d at 76.

On review, we conclude that, under the circumstances of this case, there is substantial evidence in the record to support the IJ’s adverse credibility determination, as affirmed by the BIA. For example, the IJ reasonably relied on Wang’s hesitant and unresponsive demeanor while testifying about, among other things, the details of what happened when the police came looking for Wang, the details surrounding the underground church that Wang attended in China, and why a secret church had a formal letterhead stationery that identified it. *See* 8 U.S.C. § 1158(b)(1)(B)(iii); *accord Majidi v. Gonzales*, 430 F.3d 77, 81 n.1 (2d Cir. 2005).

Moreover, the adverse credibility determination is also supported by the internal discrepancies in Wang's testimony regarding who was at his home when the police came to visit him in China for failing to report to the police as he was required to do. First, Wang testified during his credible fear interview before the asylum officer that he brought a colleague to the police station the next day to verify Wang's account that Wang missed his appointment because he needed to be at work. At the hearing before the IJ, however, Wang testified that he asked his colleague to come to the house to verify his alibi. Wang acknowledged the inconsistency in his testimony and attributed it to being nervous.¹ Although nervousness may be a plausible explanation for his inconsistent statements, Wang has failed to "demonstrate that a reasonable fact-finder would be *compelled* to credit his testimony." *Xian Tuan Ye v. Dep't of Homeland Sec.*, 446 F.3d 289, 295 (2d Cir. 2006) (citation omitted).

Similarly, even though Wang's lack of knowledge about the size and basic operations of the underground church he attended in China could be attributed reasonably to the fact that he attended the church for only two months, a reasonable fact-finder would not be "*compelled* to credit his testimony" in light of, among other things, his inability to explain the letterhead stationery for the secret church and his inconsistent statements regarding the incident with the police. *Id.*

In sum, under the totality of the circumstances, we see no reversible error in the adverse credibility determination and, thus, must defer to it under the applicable standard of review. *See Xin Xia Lin*, 534 F.3d at 167. Finally, because Wang's applications for asylum, withholding of removal, and CAT relief are all based on the same factual predicate, the adverse credibility determination disposes of the three claims. *See Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006) ("[A] petition for CAT relief may fail because of an adverse credibility ruling rendered in the asylum context where the factual basis for the alien's CAT claim was the same as that rejected in his asylum petition.") (citing *Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 523 (2d Cir. 2005)).

¹ Although the transcript of the credible fear interview was not introduced as part of the record, Wang acknowledged the discrepancy in his testimony during the cross-examination by government counsel at the hearing before the IJ. As a result, the "IJ's evaluation of [Wang's] credibility" is "tethered to the evidentiary record." *Gurung v. Barr*, 929 F.3d 56, 61 (2d Cir. 2019) (quoting *Siene v. Gonzales*, 480 F.3d 160, 169 (2d Cir. 2007)); accord 8 U.S.C. § 1252(b)(4)(A).

CONCLUSION

We have reviewed all of the remaining arguments raised by Wang on appeal and find them to be without merit. For the foregoing reasons, the petition for review is **DENIED**.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court