

**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 17th day of January, two thousand twenty.

PRESENT:

**BARRINGTON D. PARKER,
MICHAEL H. PARK,
*Circuit Judges.*¹**

**ZHE HUI ZHENG,
*Petitioner,***

v.

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

**17-4008
NAC**

FOR PETITIONER: Adedayo O. Idowu, New York, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant
Attorney General; Linda S.
Wernery, Assistant Director;
Gerard M. Alexander, Trial
Attorney, Office of Immigration

¹ Judge Christopher F. Droney, who was originally assigned to the panel, retired from the Court, effective January 1, 2020, prior to the resolution of this case. The remaining two members of the panel, who are in agreement, have determined the matter. See 28 U.S.C. § 46(d); 2d Cir. IOP E(b); *United States v. Desimone*, 140 F.3d 457, 458–59 (2d Cir. 1998).

Litigation, United States
Department of Justice, Washington,
DC.

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

Petitioner Zhe Hui Zheng, a native and citizen of the People's Republic of China, seeks review of a December 1, 2017, decision of the BIA affirming an April 5, 2017, decision of an Immigration Judge ("IJ") denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). *In re Zhe Hui Zheng*, No. A087 798 604 (B.I.A. Dec. 1, 2017), *aff'g* No. A087 798 604 (Immig. Ct. N.Y. City Apr. 5, 2017). We assume the parties' familiarity with the underlying facts and procedural history in this case.

Under the circumstances of this case, we have reviewed the IJ's decision as supplemented by the BIA. See *Yan Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). The applicable standards of review are well established. See 8 U.S.C. § 1252(b)(4); *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018).

"Considering the totality of the circumstances, and all

1 relevant factors, a trier of fact may base a credibility
2 determination on the demeanor, candor, or responsiveness of
3 the applicant . . . , the consistency between the applicant's
4 or witness's written and oral statements . . . , the internal
5 consistency of each such statement, [and] the consistency of
6 such statements with other evidence of record . . . without
7 regard to whether an inconsistency, inaccuracy, or falsehood
8 goes to the heart of the applicant's claim, or any other
9 relevant factor." 8 U.S.C. § 1158(b)(1)(B)(iii). "We defer
10 . . . to an IJ's credibility determination unless, from the
11 totality of the circumstances, it is plain that no reasonable
12 fact-finder could make such an adverse credibility ruling."
13 *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008);
14 *accord Hong Fei Gao*, 891 F.3d at 76. Substantial evidence
15 supports the adverse credibility determination.

16 We defer to the IJ's demeanor finding, which is supported
17 by the record. See *Jin Chen v. U.S. Dep't of Justice*, 426
18 F.3d 104, 113 (2d Cir. 2005). The IJ noted that Zheng's
19 responses on cross examination were inaudible and that he
20 paused for long periods before answering. The record
21 supports this finding as it reflects that the IJ instructed
22 Zheng multiple times to speak louder and warned him that his
23 whispers and pauses might call for a negative demeanor

1 finding. Moreover, as discussed below, “[w]e can be still
2 more confident in our review of observations about an
3 applicant’s demeanor where . . . they are supported by
4 specific examples of inconsistent testimony.” *Li Hua Lin v.*
5 *U.S. Dep’t of Justice*, 453 F.3d 99, 109 (2d Cir. 2006).

6 An inconsistency among Zheng’s statements about his
7 father’s presence in China at the time of Zheng’s alleged
8 arrest and his subsequent admission that he and his mother
9 made false statements provide substantial evidence for the
10 adverse credibility determination. See *Siewe v. Gonzales*,
11 480 F.3d 160, 170 (2d Cir. 2007) (“[A] single false document
12 or a single instance of false testimony may (if attributable
13 to the petitioner) infect the balance of the alien’s
14 uncorroborated or unauthenticated evidence.”). Zheng’s
15 application, his mother’s letter, and his initial testimony
16 all asserted that Zheng’s father was in China at the time of
17 Zheng’s arrest and was involved in paying Zheng’s bail and
18 taking him to the hospital after his detention. When asked
19 at the hearing, he asserted that his father had never lived
20 in the United States. However, when presented with evidence
21 that his father had lived in the United States, Zheng changed
22 his testimony and conceded that his father had been in the
23 United States at the time of his arrest. The IJ was not

1 compelled to credit Zheng's evolving explanations for his
2 false statements, i.e., that he was nervous, worried that his
3 father's undocumented status would affect his asylum claim,
4 missed his father, and wanted to protect his father. See
5 *Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005) ("A
6 petitioner must do more than offer a plausible explanation
7 for his inconsistent statements to secure relief; he must
8 demonstrate that a reasonable fact-finder would be *compelled*
9 to credit his testimony." (internal quotations omitted)); see
10 also *Ming Zhang v. Holder*, 585 F.3d 715, 725 (2d Cir. 2009)
11 ("We again reject the notion that a petitioner's claim that
12 she was nervous and distracted during the credible fear
13 interview automatically undermines or negates its reliability
14 as a source of her statements.").

15 Having questioned Zheng's credibility, the agency
16 reasonably relied on his failure to rehabilitate his
17 testimony with reliable corroborating evidence. "An
18 applicant's failure to corroborate his or her testimony may
19 bear on credibility, because the absence of corroboration in
20 general makes an applicant unable to rehabilitate testimony
21 that has already been called into question." *Biao Yang v.*
22 *Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007). "We defer to the
23 agency's determination of the weight afforded to an alien's

documentary evidence.” *Y.C. v. Holder*, 741 F.3d 324, 332 (2d Cir. 2013). The agency was not required to credit Zheng’s documentary evidence because his mother’s letter contained a false statement, she was an interested witness not subject to cross-examination, and the authenticity of that letter and the other documents turned on Zheng’s credibility. *Id.*; see also *In re H-L-H- & Z-Y-Z-*, 25 I. & N. Dec. 209, 215 (BIA 2010) (finding that unsworn letters from the alien’s friends and family did not provide substantial support because they were from interested witnesses not subject to cross-examination), *rev’d on other grounds*, *Hui Lin Huang v. Holder*, 677 F.3d 130 (2d Cir. 2012).

Given the demeanor finding, the inconsistencies and false statements, and the lack of reliable corroboration, the adverse credibility determination is supported by substantial evidence. See 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia Lin*, 534 F.3d at 167; *Biao Yang*, 496 F.3d at 273. The adverse credibility determination is dispositive of asylum, withholding of removal, and CAT relief because all three forms of relief were based on the same discredited factual predicate. See *Paul v. Gonzales*, 444 F.3d 148, 156–57 (2d Cir. 2006).

For the foregoing reasons, the petition for review is

1 DENIED. All pending motions and applications are DENIED and
2 stays VACATED.

3 FOR THE COURT:
4 Catherine O'Hagan Wolfe,
5 Clerk of Court
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