

**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 5th day of February, two thousand twenty.

PRESENT:

ROBERT A. KATZMANN,
Chief Judge,
JON O. NEWMAN,
SUSAN L. CARNEY,
Circuit Judges.

YULING ZHOU,
Petitioner,

v.

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

**17-4081
NAC**

FOR PETITIONER: Khagendra Gharti-Chhetry, New York, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant Attorney General; Paul Fiorino, Senior Litigation Counsel; Jenny C. Lee, Trial Attorney, Office of Immigration Litigation, United

1 States Department of Justice,
2 Washington, DC.
3

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

8 Petitioner Yuling Zhou, a native and citizen of the
9 People's Republic of China, seeks review of a December 1,
10 2017 decision of the BIA affirming an April 3, 2017 decision
11 of an Immigration Judge ("IJ") denying her application for
12 asylum, withholding of removal, and relief under the
13 Convention Against Torture ("CAT"). *In re Yuling Zhou*, No.
14 A208 618 203 (B.I.A. Dec. 1, 2017), *aff'g* No. A208 618 203
15 (Immig. Ct. N.Y. City Apr. 3, 2017). We assume the parties'
16 familiarity with the underlying facts and procedural history
17 in this case.

18 Under the circumstances of this case, we have reviewed
19 both the IJ's and the BIA's opinions "for the sake of
20 completeness." *Wangchuck v. Dep't of Homeland Security*, 448
21 F.3d 524, 528 (2d Cir. 2006). The applicable standards of
22 review are well established. See 8 U.S.C. § 1252(b)(4)(B);
23 *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018).

1 “Considering the totality of the circumstances, and all
2 relevant factors, a trier of fact may base a credibility
3 determination on . . . the consistency between the applicant’s
4 or witness’s written and oral statements . . . , the internal
5 consistency of each such statement, the consistency of such
6 statements with other evidence of record . . . , and any
7 inaccuracies or falsehoods in such statements, without regard
8 to whether an inconsistency, inaccuracy, or falsehood goes to
9 the heart of the applicant’s claim, or any other relevant
10 factor.” 8 U.S.C. § 1158(b)(1)(B)(iii). “We defer . . . to
11 an IJ’s credibility determination unless, from the totality
12 of the circumstances, it is plain that no reasonable fact-
13 finder could make such an adverse credibility ruling.” *Xiu*
14 *Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008); accord
15 *Hong Fei Gao*, 891 F.3d at 76. Substantial evidence supports
16 the agency’s determination that Zhou was not credible.

17 The agency reasonably relied on discrepancies between
18 Zhou’s application and testimony. See 8 U.S.C.
19 § 1158(b)(1)(B)(iii); *Xiu Xia Lin*, 534 F.3d at 165-67. Zhou
20 testified that her mother told her that police officers were
21 looking for her for three to four weeks after she left China,
22 but she did not include this information in her asylum

1 application. The agency did not err in relying on this
2 omission. See *Hong Fei Gao*, 891 F.3d at 78-79 (weight given
3 to an omission depends, in part, on whether “facts are ones
4 that a credible petitioner would reasonably have been
5 expected to disclose under the relevant circumstances”). Nor
6 did the agency err in relying on the omission of this
7 information from her mother or uncle’s letters. While we
8 have held that a third party’s omission is less probative of
9 credibility in a situation where the omission does not create
10 any inconsistency with the applicant’s account, here, the
11 omission deals with facts that one would expect to be included
12 in supporting letters. *Id.* at 78-79, 81. While Zhou argued
13 that no one told her relatives what to include in their
14 letters, the IJ was not compelled to credit this explanation.
15 See *Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005) (“A
16 petitioner must do more than offer a plausible explanation
17 for h[er] inconsistent statements to secure relief; [s]he
18 must demonstrate that a reasonable fact-finder would be
19 *compelled* to credit [her] testimony.” (internal quotation
20 marks omitted)).

21 The agency also reasonably relied on inconsistencies and
22 omissions relating to whether Zhou left her house to report

1 to the police after her release from detention. See 8 U.S.C.
2 § 1158(b)(i)(B)(iii). Zhu testified on direct that a
3 condition of her release was to report to the police station,
4 and that she reported about 14 times, but she failed to offer
5 this information on cross examination until specifically
6 prompted. Moreover, the letters from Zhou's mother and uncle
7 did not mention this reporting requirement and thus did not
8 rehabilitate Zhou's testimony as to either the reporting
9 requirement or the police seeking to locate her after her
10 departure from China. See *Biao Yang v. Gonzales*, 496 F.3d
11 268, 273 (2d Cir. 2007) ("An applicant's failure to
12 corroborate his or her testimony may bear on credibility,
13 because the absence of corroboration in general makes an
14 applicant unable to rehabilitate testimony that has already
15 been called into question."). In addition to the fact that
16 the letters did not corroborate these aspects of Zhou's
17 testimony, the IJ was not required to credit letters from
18 family members who were unavailable for cross examination.
19 See *Y.C. v. Holder*, 741 F.3d 324, 334 (2d Cir. 2013) (holding
20 that "[w]e defer to the agency's determination of the weight
21 afforded to an alien's documentary evidence" and upholding
22 BIA's decision not to credit letter from spouse in China).

Given these discrepancies and lack of 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. That determination is dispositive of asylum, withholding of removal, and CAT relief because all three claims were based on the same factual predicate. See *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006).

For the foregoing reasons, the petition for review is DENIED. All pending motions and applications are DENIED and stays VACATED.

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