

**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 22nd day of January, two thousand twenty.

PRESENT:

**RICHARD C. WESLEY,
PETER W. HALL,
DENNY CHIN,**
Circuit Judges.

**MONIR AHAMMED BHUIYAN, AKA MONIR
HOSSAIN,**
Petitioner,

v.

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

**17-4115
NAC**

FOR PETITIONER: Visuvanathan Rudrakumaran, New York, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant Attorney General; Justin Markel, Senior Litigation Counsel; Margaret O'Donnell, Trial Attorney, Office of Immigration

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 Monir Ahammed Bhuiyan, a native and citizen of Bangladesh, seeks review of a December 1, 2017, decision of the BIA affirming a February 27, 2017, decision of an Immigration Judge ("IJ") denying Bhuiyan's application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). *In re Monir Ahammed Bhuiyan*, No. A205 643 430 (B.I.A. Dec. 1, 2017), *aff'g* No. A205 643 430 (Immig. Ct. N.Y. City Feb. 27, 2017). We assume the parties' familiarity with the underlying facts and procedural history in this case.

In his brief, Bhuiyan argues for the first time that the agency failed to make an explicit adverse credibility determination. In addition to being unexhausted, this argument finds no support in the record. The IJ stated that Bhuiyan was not credible and made specific findings, Bhuiyan

1 challenged the adverse credibility determination on appeal to
2 the BIA, and the BIA agreed with the IJ's adverse credibility
3 determination. Accordingly, we have reviewed both the BIA's
4 and IJ's decisions as to the adverse credibility determination.
5 See *Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005).
6 We review the adverse credibility determination under the
7 substantial evidence standard. See 8 U.S.C. § 1252(b)(4)(B);
8 *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018).
9 "Considering the totality of the circumstances, and all
10 relevant factors, a trier of fact may base a credibility
11 determination on . . . the inherent plausibility of the
12 applicant's . . . account, the consistency between the
13 applicant's . . . written and oral statements . . . , the
14 internal consistency of each such statement, [and] the
15 consistency of such statements with other evidence of record
16 . . . without regard to whether an inconsistency, inaccuracy,
17 or falsehood goes to the heart of the applicant's claim . .
18 . ." 8 U.S.C. § 1158(b)(1)(B)(iii). "We defer . . . to an
19 IJ's credibility determination unless, from the totality of
20 the circumstances, it is plain that no reasonable fact-finder
21 could make such an adverse credibility ruling." *Xiu Xia Lin*

1 *v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008); accord *Hong Fei*
2 *Gao*, 891 F.3d at 76. Substantial evidence supports the
3 agency's determination that Bhuiyan was not credible as to
4 his claim that he was persecuted by the Awami League and the
5 police on account of his membership in Jubo Dal, the youth
6 branch of the Bangladesh Nationalist Party ("BNP").

7 The agency reasonably relied on Bhuiyan's inconsistent
8 statements about the number of times he was attacked by Awami
9 League members and whether he was attacked by the police.
10 See 8 U.S.C. § 1158(b)(1)(B)(iii). At his credible fear
11 interview, Bhuiyan stated that he was attacked by Awami League
12 members once in 2009, he explicitly denied prior or subsequent
13 attacks, and he stated that he had never been mistreated by
14 police. In contrast, he testified that he was attacked by
15 Awami League members three times and that he was arrested,
16 detained, and severely beaten by the police in 2010. The
17 agency was not required to credit Bhuiyan's explanation that
18 he was disoriented and nervous during his interview. See
19 *Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005) ("A
20 petitioner must do more than offer a plausible explanation
21 for . . . inconsistent statements to secure relief; he must

1 demonstrate that a reasonable fact-finder would be *compelled*
2 to credit his testimony.” (internal quotations omitted));
3 *Yun-Zui Guan*, 432 F.3d at 397 n.6 (applicant’s “mere
4 recitation that he was nervous or felt pressured during an
5 airport interview will not automatically prevent” the agency
6 from relying on statements made during the interview).
7 Despite an error in the agency’s reliance on a third
8 inconsistency regarding whether Bhuiyan’s attackers pressured
9 him to switch parties, these major inconsistencies regarding
10 the bases of his claim provide substantial evidence to support
11 the adverse credibility determination. See *Xian Tuan Ye v.*
12 *Dep’t of Homeland Sec.*, 446 F.3d 289, 295 (2d Cir. 2006)
13 (holding that a material inconsistency regarding the basis of
14 an applicant’s asylum claim is substantial evidence of
15 adverse credibility); see also *Xiao Ji Chen v. U.S. Dep’t of*
16 *Justice*, 471 F.3d 315, 338–39 (2d Cir. 2006) (denying petition
17 despite errors in adverse credibility determination because
18 there was substantial evidence for the determination absent
19 the errors).

20 Moreover, the adverse credibility determination is
21 bolstered by the agency’s implausibility findings. See

1 8 U.S.C. § 1158(b)(1)(B)(iii); *Wensheng Yan v. Mukasey*, 509
2 F.3d 63, 66 (2d Cir. 2007) (“It is well settled that, in
3 assessing the credibility of an asylum applicant’s testimony,
4 an IJ is entitled to consider whether the applicant’s story
5 is inherently implausible.”). And the IJ’s findings are
6 sufficiently tethered to the record. See *Siewe v. Gonzales*,
7 480 F.3d 160, 168–69 (2d Cir. 2007) (An implausibility finding
8 that is based on “speculation that inheres in inference is
9 not ‘bald’ if the inference is made available to the
10 factfinder by record facts, or even a single fact, viewed in
11 the light of common sense and ordinary experience.”). The
12 IJ reasonably found implausible Bhuiyan’s testimony that he
13 was unaware of the BNP’s involvement in violence, because he
14 later admitted that he had heard about violence and war crimes
15 committed by BNP members and his memorandum of law in support
16 of his application acknowledged violence between the BNP and
17 Awami League. Additionally, the IJ reasonably found it
18 implausible that Bhuiyan would go to the police and turn over
19 threatening letters without making copies of them as he
20 testified that the police had destroyed a previous letter,
21 refused to investigate, and detained and beat him. Finally,

1 as the agency found, Bhuiyan could not explain why local
2 higher-level BNP and Jubo Dal party members were able to
3 continue in their roles without interference while he had
4 allegedly been repeatedly targeted by the Awami League.

5 Finally, the agency did not err in finding that Bhuiyan's
6 documentary evidence failed to rehabilitate his credibility.
7 "We generally defer to the agency's evaluation of the weight
8 to be afforded to an applicant's documentary evidence." *Y.C.*
9 *v. Holder*, 741 F.3d 324, 332 (2d Cir. 2013). The IJ
10 reasonably afforded diminished weight to the letters and
11 affidavits from family, doctors, and fellow party members
12 because the authors were interested parties and/or not
13 subject to cross-examination, and some of the documents
14 lacked detail about the alleged persecution. See *id.* at 334
15 (deferring to agency's decision to afford little weight to
16 relative's letter from China because it was unsworn and from
17 an interested witness); *Matter of H-L-H- & Z-Y-Z-*, 25 I. & N.
18 Dec. 209, 215 (B.I.A. 2010) (finding that letters from alien's
19 friends and family were insufficient to provide substantial
20 support for alien's claims because they were from interested
21 witnesses not subject to cross-examination), *overruled on*

1 *other grounds by Hui Lin Huang v. Holder*, 677 F.3d 130, 133–
2 38 (2d Cir. 2012).

3 Given Bhuiyan’s inconsistent statements and the
4 implausible aspects of his testimony, the agency’s adverse
5 credibility determination is supported by substantial
6 evidence. See 8 U.S.C. § 1158(b)(1)(B)(iii). The adverse
7 credibility determination is dispositive of asylum,
8 withholding of removal, and CAT relief because all three forms
9 of relief are based on the same factual predicate. See *Paul*
10 *v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006).

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

14 FOR THE COURT:
15 Catherine O’Hagan Wolfe,
16 Clerk of Court