

**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 28th day of January, two thousand twenty.

PRESENT:

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

DAOPING ZHU,

Petitioner,

v.

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

Respondent.

**18-108
NAC**

FOR PETITIONER: Joan Xie, Esq., New York, NY.

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

1 Department of Justice, Washington,
2 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 Daoping Zhu, a native and citizen of China,
9 seeks review of a December 29, 2017, decision of the BIA
10 affirming an April 24, 2017, decision of an Immigration Judge
11 ("IJ") denying Zhu's application for asylum, withholding of
12 removal, and relief under the Convention Against Torture
13 ("CAT"). *In re Daoping Zhu*, No. A206 071 167 (B.I.A. Dec.
14 29, 2017), *aff'g* No. A206 071 167 (Immig. Ct. N.Y. City Apr.
15 24, 2017). We assume the parties' familiarity with the
16 underlying facts and procedural history in this case.

17 We have reviewed the IJ's decision as modified by the
18 BIA. See *Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d
19 520, 522 (2d Cir. 2005). The applicable standards of review
20 are well established. See 8 U.S.C. § 1252(b)(4)(B); *Hong Fei*
21 *Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018) (reviewing
22 adverse credibility determinations for substantial evidence).

1 "Considering the totality of the circumstances, and all
2 relevant factors, a trier of fact may base a credibility
3 determination on . . . the inherent plausibility of the
4 applicant's . . . account, the consistency between the
5 applicant's . . . written and oral statements . . . , the
6 internal consistency of each such statement, [and] the
7 consistency of such statements with other evidence of record
8 . . . without regard to whether an inconsistency, inaccuracy,
9 or falsehood goes to the heart of the applicant's claim . .
10 . ." 8 U.S.C. § 1158(b)(1)(B)(iii). "We defer . . . to an
11 IJ's credibility determination unless, from the totality of
12 the circumstances, it is plain that no reasonable fact-finder
13 could make such an adverse credibility ruling." *Xiu Xia Lin*
14 *v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008); accord *Hong Fei*
15 *Gao*, 891 F.3d at 76. Because Zhu's asylum claim is based on
16 his involvement with the U.S. Committee of the Democratic
17 Party of China ("DPC") while in the United States, he was
18 required to "make some showing that authorities in [China]
19 are either aware of his activities or likely to become aware
20 of his activities." *Hongsheng Leng v. Mukasey*, 528 F.3d 135,
21 143 (2d Cir. 2008). Substantial evidence supports the

1 agency's determination that Zhu was not credible as to his
2 claim that he will be persecuted in China on account of his
3 support for the DPC while in the United States.

4 The agency reasonably relied on several inconsistencies
5 among Zhu's testimony, application, and documentary evidence
6 concerning Chinese officials' alleged contacts with his wife.
7 Zhu claimed that Chinese officials visited his wife multiple
8 times to question her about his activities in the United
9 States and that she was detained and interrogated overnight
10 on one occasion. But his wife's letter only referenced one
11 visit. There were further inconsistencies, in that (1) his
12 wife indicated both that the visit occurred shortly before
13 she wrote the letter in January 2017 and that she believed
14 she had been under surveillance for months following the visit
15 and (2) Zhu testified both that such visits usually occurred
16 in June near the anniversary of the Tiananmen Square protests
17 and that the incident occurred in January because the visits
18 often coincided with the Chinese New Year. These
19 inconsistencies cast doubt on a central component of Zhu's
20 claim: whether Chinese officials were in fact aware of his
21 Democratic activities in the United States. See *Hongsheng*

1 *Leng*, 528 F.3d at 143. Zhu did not provide a compelling
2 explanation for these inconsistencies. See *Majidi v.*
3 *Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005) (“A petitioner must
4 do more than offer a plausible explanation for . . .
5 inconsistent statements to secure relief; he must demonstrate
6 that a reasonable fact-finder would be *compelled* to credit
7 his testimony.” (internal quotations omitted)).

8 The adverse credibility determination is bolstered by
9 the IJ’s findings that the plausibility of Zhu’s claim was in
10 question. See 8 U.S.C. § 1158(b)(1)(B)(iii); *Wensheng Yan*
11 *v. Mukasey*, 509 F.3d 63, 66 (2d Cir. 2007) (“It is well
12 settled that, in assessing the credibility of an asylum
13 applicant’s testimony, an IJ is entitled to consider whether
14 the applicant’s story is inherently implausible.”). The IJ’s
15 findings are sufficiently tethered to the record. See *Siewe*
16 *v. Gonzales*, 480 F.3d 160, 168–69 (2d Cir. 2007) (An
17 implausibility finding that is based on “speculation that
18 inheres in inference is not ‘bald’ if the inference is made
19 available to the factfinder by record facts, or even a single
20 fact, viewed in the light of common sense and ordinary
21 experience.”). First, Zhu’s wife’s letter alleging that she

1 was interrogated was suspect as the letter arrived just weeks
2 before the merits hearing, did not corroborate earlier
3 visits, and did not mention the Chinese New Year despite Zhu's
4 explanation that his wife sent the letter as a holiday
5 greeting. Second, Zhu obtained English translations of
6 notarial certificates from China of his marriage certificate
7 and his, his wife's, and his son's birth certificates in 2011.
8 Despite having obtained the certificate in 2011, which was
9 two years before he joined the DPC, when questioned about it,
10 he initially explained that he acquired the documents to
11 prepare an asylum case. The timing of this evidence thus
12 indicated that Zhu may have fabricated his claim. See *Y.C.*
13 *v. Holder*, 741 F.3d 332, 338 (2d Cir. 2013) (expressing
14 concern about ease of manufacturing claims based on political
15 activities undertaken only in the United States).

16 The agency also reasonably found that Zhu's remaining
17 documentary evidence failed to rehabilitate his credibility.
18 "An applicant's failure to corroborate his or her testimony
19 may bear on credibility, because the absence of corroboration
20 in general makes an applicant unable to rehabilitate
21 testimony that has already been called into question." *Biao*

1 *Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007). The
2 photographs purportedly showing Zhu's DPC activities
3 conflicted with his testimony regarding the date of his
4 swearing in and were suspect because photographs purportedly
5 taken only a few apart hours showed him wearing different
6 clothing.

7 Given these problems with Zhu's testimony and documents,
8 substantial evidence supports the adverse credibility
9 determination. See 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia*
10 *Lin*, 534 F.3d at 167. Although the agency relied on two
11 inconsistencies that are not supported by the record
12 concerning the contents of DPC flyers and Zhu's discovery of
13 the DPC, we determine that those errors do not require remand.
14 See *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 339
15 (2d Cir. 2006) (holding that remand is futile when this Court
16 can "confidently predict" that the agency would reach the
17 same decision absent any errors). The adverse credibility
18 determination is dispositive of asylum, withholding of
19 removal, and CAT relief because all three forms of relief are
20 based on the same factual predicate. See *Paul v. Gonzales*,
21 444 F.3d 148, 156-57 (2d Cir. 2006).

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

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