

**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 4th day of February, two thousand twenty.

PRESENT:

GUIDO CALABRESI,
JOSÉ A. CABRANES,
RICHARD J. SULLIVAN,
Circuit Judges.

MIN JIAN JIANG,
Petitioner,

v.

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

**18-1652
NAC**

FOR PETITIONER: Gerald Karikari, Esq., New York,
NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant Attorney
General; Lisa M. Arnold, Senior
Litigation Counsel; Joseph B.
Edlow, Trial Attorney, Office of

1 Immigration Litigation, United
2 States Department of Justice,
3 Washington, DC.

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 Min Jian Jiang, a native and citizen of China,
9 seeks review of a May 22, 2018 decision of the BIA affirming
10 a May 22, 2017 decision of an Immigration Judge ("IJ") denying
11 Jiang's application for asylum, withholding of removal, and
12 relief under the Convention Against Torture ("CAT"). *In re*
13 *Min Jian Jiang*, No. A205 046 327 (B.I.A. May 22, 2018), *aff'g*
14 No. A205 046 327 (Immig. Ct. N.Y. City May 22, 2017). We
15 assume the parties' familiarity with the underlying facts and
16 procedural history.

17 We have reviewed both the IJ's and the BIA's decisions
18 "for the sake of completeness." *Wangchuck v. Dep't of*
19 *Homeland Sec.*, 448 F.3d 524, 528 (2d Cir. 2006). The
20 applicable standards of review are well established. See 8
21 U.S.C. § 1252(b)(4)(B); *Hong Fei Gao v. Sessions*, 891 F.3d
22 67, 76 (2d Cir. 2018) (reviewing adverse credibility
23 determination 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 demeanor, candor, or responsiveness of
4 the applicant . . . , the consistency between the applicant’s
5 . . . written and oral statements . . . , the internal
6 consistency of each such statement, [and] the consistency of
7 such statements with other evidence of record . . . without
8 regard to whether an inconsistency, inaccuracy, or falsehood
9 goes to the heart of the applicant’s claim, or any other
10 relevant factor.” 8 U.S.C. § 1158(b)(1)(B)(iii). “We defer
11 . . . to an IJ’s credibility determination unless, from the
12 totality of the circumstances, it is plain that no reasonable
13 fact-finder could make such an adverse credibility ruling.”
14 *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008);
15 *accord Hong Fei Gao*, 891 F.3d at 76. The agency’s adverse
16 credibility determination is supported by substantial
17 evidence.

18 Jiang does not substantively challenge the agency’s
19 demeanor finding and has therefore waived review of that
20 determination. *See Yueqing Zhang v. Gonzales*, 426 F.3d 540,
21 541 n.1, 545 n.7 (2d Cir. 2005) (noting that petitioner
22 abandons issues and claims not raised in his brief).

1 Regardless of waiver, the agency properly considered Jiang's
2 demeanor to find him not credible because the finding is
3 grounded in the record, and we generally defer to an IJ's
4 demeanor finding. See *Jin Chen v. U.S. Dep't of Justice*, 426
5 F.3d 104, 113 (2d Cir. 2005) ("We give particular deference
6 to credibility determinations that are based on the
7 adjudicator's observation of the applicant's demeanor, in
8 recognition of the fact that the IJ's ability to observe the
9 witness's demeanor places h[im] in the best position to
10 evaluate whether apparent problems in the witness's testimony
11 suggest a lack of credibility or, rather, can be attributed
12 to an innocent cause such as difficulty understanding the
13 question.").

14 The IJ found Jiang had "long pauses" when testifying.
15 This finding is supported by the record: when asked why he
16 did not name in his written statement a coworker who was also
17 persecuted, Jiang did not immediately answer, and later, when
18 confronted with an inconsistency about when he began
19 practicing Falun Gong in a New York park, there was a long
20 pause before Jiang replied. [CAR 119, 163.] Because the record
21 supports the IJ's demeanor findings, we defer to the agency's
22 adverse credibility determination in that respect. See *Jin*

1 *Chen*, 426 F.3d at 113.

2 The agency also reasonably relied on inconsistencies
3 between Jiang and his friend about when Jiang began practicing
4 Falun Gong in a New York park and how the friends reconnected
5 in New York. Further, Jiang was internally inconsistent
6 about how many times per week he practiced Falun Gong. He
7 did not have compelling explanations for these
8 inconsistencies. See *Majidi v. Gonzales*, 430 F.3d 77, 80 (2d
9 Cir. 2005) (“A petitioner must do more than offer a plausible
10 explanation for his inconsistent statements to secure relief;
11 he must demonstrate that a reasonable fact-finder would be
12 compelled to credit his testimony.” (internal quotation marks
13 omitted)).

14 Having questioned Jiang’s credibility, the agency
15 reasonably relied on his failure to rehabilitate his
16 testimony with reliable corroborating evidence. See *Biao*
17 *Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007) (“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.”). Jiang
22 submitted undated pictures taken by an unknown photographer

1 of Jiang allegedly practicing Falun Gong and protesting the
2 Chinese government in the United States, unsworn statements
3 from a friend in China and his mother, and a notarized
4 affidavit from his witness. The agency did not err in
5 declining to afford significant weight to these documents
6 because the photographer, the friend, and Jiang's mother were
7 not available for cross-examination, and his mother was an
8 interested witness. See *Y.C. v. Holder*, 741 F.3d 324, 334
9 (2d Cir. 2013) (deferring to agency's decision to afford
10 little weight to spouse's letter because it was unsworn and
11 from an interested witness); see also *In re H-L-H- & Z-Y-Z-*,
12 25 I. & N. Dec. 209, 215 (BIA 2010) (finding that unsworn
13 letters from alien's friends and family were insufficient to
14 provide substantial support for alien's claims because they
15 were from interested witnesses not subject to cross-
16 examination), *overruled on other grounds by Hui Lin Huang v.*
17 *Holder*, 677 F.3d 130, 133-38 (2d Cir. 2012). And Jiang
18 testified inconsistently with his witness, rendering the
19 witness's affidavit unreliable. Jiang did not submit any
20 particularized, objective evidence to support his claim. See
21 *Mu Xiang Lin v. U.S. Dep't of Justice*, 432 F.3d 156, 160 (2d
22 Cir. 2005) (requiring "particularized evidence" beyond

1 general country conditions to support a claim).

2 Accordingly, given the demeanor finding, the record
3 inconsistencies, and the lack of reliable corroboration, the
4 adverse credibility determination is supported by substantial
5 evidence. See *Xiu Xia Lin*, 534 F.3d at 165-66. The adverse
6 credibility determination was dispositive of asylum,
7 withholding of removal, and CAT relief because all three forms
8 of relief were based on the same discredited factual
9 predicate. See *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d
10 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