

**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 14th day of April, two thousand twenty.

PRESENT:

JOSÉ A. CABRANES,
GERARD E. LYNCH,
MICHAEL H. PARK,
Circuit Judges.

LOVEJED SINGH,
Petitioner,

v.

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

**18-2061
NAC**

FOR PETITIONER: Deepti Vithal, Esq., Richmond Hill,
NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant Attorney
General; Kiley Kane, Senior

1 Litigation Counsel; Judith R.
2 O'Sullivan, Trial Attorney, Office
3 of Immigration Litigation, United
4 States Department of Justice,
5 Washington, DC.

6 UPON DUE CONSIDERATION of this petition for review of a Board
7 of Immigration Appeals ("BIA") decision, it is hereby ORDERED,
8 ADJUDGED, AND DECREED that the petition for review is DISMISSED
9 in part and DENIED in part.

10 Petitioner Lovejed Singh, a native and citizen of India,
11 seeks review of a June 29, 2018, decision of the BIA affirming
12 a July 28, 2017, decision of an Immigration Judge ("IJ") denying
13 Singh's application for asylum, withholding of removal, and
14 relief under the Convention Against Torture ("CAT"). *In re*
15 *Lovejed Singh*, No. A 208 179 455 (B.I.A. Jun. 29, 2018), *aff'g*
16 No. A 208 179 455 (Immig. Ct. N.Y. City Jul. 28, 2017). We assume
17 the parties' familiarity with the underlying facts and
18 procedural history in this case.

19 Under the circumstances of this case, we have reviewed the
20 IJ's decision as modified by the BIA, that is, minus the findings
21 the BIA declined to rely on. See *Xue Hong Yang v. U.S. Dep't*
22 *of Justice*, 426 F.3d 520, 522 (2d Cir. 2005). Accordingly, we
23 only address the agency's finding of the asylum claim as untimely
24 and the adverse credibility determination.

1 **I. Asylum: One-Year Filing Deadline**

2 An alien is ineligible for asylum “unless the alien
3 demonstrates by clear and convincing evidence that the
4 application has been filed within 1 year after the date of the
5 alien’s arrival in the United States.” 8 U.S.C.
6 § 1158(a)(2)(B). An application may be considered outside the
7 one-year deadline “if the alien demonstrates . . . the existence
8 of changed circumstances which materially affect the applicant’s
9 eligibility for asylum or extraordinary circumstances relating
10 to the delay,” *id.* § 1158(a)(2)(D), and the application is filed
11 “within a reasonable period given those circumstances,” 8 C.F.R.
12 § 1208.4(a)(4)(ii), (a)(5).

13 Our jurisdiction to review the agency’s findings regarding
14 the timeliness of an asylum application and the circumstances
15 excusing the untimeliness is limited to constitutional claims
16 or questions of law. See 8 U.S.C. §§ 1158(a)(3), 1252(a)(2)(D).
17 When assessing jurisdiction, we “study the arguments asserted
18 . . . to determine, regardless of the rhetoric employed in the
19 petition, whether it merely quarrels over the correctness of
20 the factual findings or justification for the discretionary
21 choices, in which case the court would lack jurisdiction or

1 whether it instead raises a 'constitutional claim' or 'question
2 of law,' in which case the court could exercise jurisdiction
3 to review those particular issues." *Xiao Ji Chen v. U.S. Dep't*
4 *of Justice*, 471 F.3d 315, 329 (2d Cir. 2006). For jurisdiction
5 to attach, such claims must be colorable. *Barco-Sandoval v.*
6 *Gonzales*, 516 F.3d 35, 40-41 (2d Cir. 2008). We review
7 constitutional claims and questions of law de novo. *Pierre v.*
8 *Holder*, 588 F.3d 767, 772 (2d Cir. 2009).

9 Singh concedes that his application was untimely, but he
10 argues that his mental health issues excused his untimely filing.
11 Specifically, he states that the agency ignored the
12 psychological evaluation in the record that supports his claim
13 that his memory issues impacted his filing. The IJ and BIA,
14 however, both explicitly referenced the evaluation when finding
15 that there was insufficient evidence that Singh's mental health
16 issues prevented timely filing. Singh, then, "merely quarrels
17 over the correctness of the factual findings or justification
18 for the discretionary choices," which we do not have jurisdiction
19 to review. *Xiao Ji Chen*, 471 F.3d at 329. Accordingly, we
20 dismiss the petition as to asylum. Moreover, as discussed below

1 the agency's alternative adverse credibility determination is
2 supported by substantial evidence.

3 **II. Adverse Credibility**

4 We review the agency's adverse credibility determination
5 under a substantial evidence standard. See 8 U.S.C.
6 § 1252(b)(4)(B); *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d
7 Cir. 2018). "Considering the totality of the circumstances, and
8 all relevant factors, a trier of fact may base a credibility
9 determination on the demeanor, candor, or responsiveness of the
10 applicant . . . , the consistency between the applicant's . .
11 . written and oral statements . . . , the internal consistency
12 of each such statement, [and] the consistency of such statements
13 with other evidence of record . . . without regard to whether
14 an inconsistency, inaccuracy, or falsehood goes to the heart
15 of the applicant's claim" 8 U.S.C.
16 § 1158(b)(1)(B)(iii). "We defer . . . to an IJ's credibility
17 determination unless, from the totality of the circumstances,
18 it is plain that no reasonable fact-finder could make such an
19 adverse credibility ruling." *Xiu Xia Lin v. Mukasey*, 534 F.3d
20 162, 167 (2d Cir. 2008); accord *Hong Fei Gao*, 891 F.3d at 76.

1 The adverse credibility determination is supported by
2 substantial evidence.

3 Singh alleged that he joined the Simranjit Singh Mann Party
4 in January 2015, and members of an opposition party beat him
5 once in February 2015 and threatened him twice. As the agency
6 found, Singh's statements that he did not report his beating
7 or threats to the police were inconsistent with a letter he
8 submitted, in which his neighbor alleged that he was with Singh
9 whenever he made reports to the police. Singh did not have a
10 compelling explanation for the discrepancy, stating only that
11 he did not prepare his neighbor's letter. *See Majidi v.*
12 *Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005) ("A petitioner must
13 do more than offer a plausible explanation for his inconsistent
14 statements to secure relief; he must demonstrate that a
15 reasonable fact-finder would be *compelled* to credit his
16 testimony." (internal quotation marks omitted)).

17 Further, the agency's demeanor finding bolsters the adverse
18 credibility determination. "We give particular deference to
19 credibility determinations that are based on the adjudicator's
20 observation of the applicant's demeanor, in recognition of the
21 fact that the IJ's ability to observe the witness's demeanor

1 places h[im] in the best position to evaluate whether apparent
2 problems in the witness's testimony suggest a lack of credibility
3 or, rather, can be attributed to an innocent cause such as
4 difficulty understanding the question." *Jin Chen v. U.S. Dep't*
5 *of Justice*, 426 F.3d 104, 113 (2d Cir. 2005). The record also
6 supports the IJ's conclusion that Singh's testimony lacked
7 detail: Singh gave vague answers about what his party did or
8 what its agenda was, stating that he joined because the party
9 was "excellent" and that it wanted to keep people off drugs and
10 did "excellent work," and Singh's allegation that that he would
11 be killed because of his party membership was not supported by
12 any examples or details other than his own single beating.

13 Because of the inconsistency and the demeanor finding, the
14 IJ reasonably determined that Singh's credibility was in
15 question. See 8 U.S.C. § 1158(b)(1)(B)(iii). The IJ also
16 properly relied on Singh's failure to rehabilitate his testimony
17 with reliable objective corroboration of his injuries and
18 medical treatment, as the letter Singh submitted from his doctor
19 was unauthenticated, vague, and not contemporaneous with his
20 treatment. See *Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir.
21 2007) ("An applicant's failure to corroborate his or her

1 testimony may bear on credibility, because the absence of
2 corroboration in general makes an applicant unable to
3 rehabilitate testimony that has already been called into
4 question."); see also *Y.C. v. Holder*, 741 F.3d 324, 332 (2d Cir.
5 2013) ("We generally defer to the agency's evaluation of the
6 weight to be afforded an applicant's documentary evidence.");
7 see also *In re H-L-H- & Z-Y-Z-*, 25 I. & N. Dec. 209, 214 n.5,
8 215 (BIA 2010) (finding that letters from friends and family
9 were insufficient to provide substantial support for claims
10 because they were from interested witnesses not subject to
11 cross-examination and noting that the "failure to attempt to
12 prove the authenticity of a document through [8 C.F.R. § 1287.6]
13 or any other means is significant"), *overruled on other grounds*
14 *by Hui Lin Huang v. Holder*, 677 F.3d 130, 133-38 (2d Cir. 2012).

15 Given the inconsistency between Singh's testimony and his
16 neighbor's, which relates to Singh's only allegation of past
17 harm, the deference due to the IJ's demeanor finding, and the
18 lack of reliable objective corroboration, the agency's adverse
19 credibility determination is supported by substantial evidence.
20 See *Xiu Xia Lin*, 534 F.3d at 167. That determination is
21 dispositive of asylum, withholding of removal, and CAT relief

1 because all three claims are based on the same factual predicate.
2 See *Paul v. Gonzales*, 444 F.3d 148, 156–57 (2d Cir. 2006).

3 For the foregoing reasons, the petition for review is
4 DISMISSED in part and DENIED in remaining part. All pending
5 motions and applications are DENIED and stays VACATED.

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