

**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 17th day of April, two thousand twenty.

PRESENT:

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

YUAN LAN SHI,
Petitioner,

v.

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

**18-2218
NAC**

FOR PETITIONER: Richard Tarzia, Esq., Belle Mead,
NJ.

FOR RESPONDENT: Joseph H. Hunt, Assistant Attorney
General; Cindy S. Ferrier,
Assistant Director; Andrew N.

1 O'Malley, Senior Litigation
2 Counsel, Office of Immigration
3 Litigation, United States
4 Department of Justice, Washington,
5 DC.

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

10 Petitioner Yuan Lan Shi, a native and citizen of China,
11 seeks review of a July 17, 2018, decision of the BIA affirming
12 an August 8, 2017, decision of an Immigration Judge ("IJ")
13 denying Shi's application for asylum, withholding of removal,
14 and relief under the Convention Against Torture ("CAT"). *In*
15 *re Yuan Lan Shi*, No. A 202 037 191 (B.I.A. Jul. 17, 2018),
16 *aff'g* No. A 202 037 191 (Immig. Ct. N.Y. City Aug. 8, 2017).
17 We assume the parties' familiarity with the underlying facts
18 and procedural history in this case.

19 We have reviewed both the IJ's and the BIA's decisions
20 "for the sake of completeness." *Wangchuck v. Dep't of*
21 *Homeland Sec.*, 448 F.3d 524, 528 (2d Cir. 2006). The
22 applicable standards of review are well established. See 8
23 U.S.C. § 1252(b)(4)(B); *Hong Fei Gao v. Sessions*, 891 F.3d
24 67, 76 (2d Cir. 2018) (reviewing adverse credibility

determination for substantial evidence).

“Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant . . . , the consistency between the applicant’s . . . written and oral statements . . . , the internal consistency of each such statement, [and] the consistency of such statements with other evidence of record . . . without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor.” 8 U.S.C. § 1158(b)(1)(B)(iii). “We defer . . . to an IJ’s credibility determination unless, from the totality of the circumstances, it is plain that no reasonable fact-finder could make such an adverse credibility ruling.” *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008) (per curiam); accord *Hong Fei Gao*, 891 F.3d at 76. The agency’s adverse credibility determination is supported by substantial evidence.

First, Shi was inconsistent about how many people came to take her to get a forced abortion, and she did not offer a compelling explanation for this inconsistency, which goes

1 to the heart of her claim. See *Majidi v. Gonzales*, 430 F.3d
2 77, 80 (2d Cir. 2005) (“A petitioner must do more than offer
3 a plausible explanation for h[er] inconsistent statements to
4 secure relief; [s]he must demonstrate that a reasonable fact-
5 finder would be *compelled* to credit h[er] testimony.”
6 (internal quotation marks omitted)).

7 Second, Shi failed to disclose in her asylum application
8 that she lived in France for about four years from 2005 to
9 2009 and had applied for asylum there. Shi’s explanation
10 that her lawyer did not ask her the question does not fully
11 resolve such an omission of a relatively long period of her
12 adult life and a previous attempt at seeking asylum. *Id.*
13 While the agency may err if it relies too heavily on minor
14 omissions, at least where the omitted information would have
15 supplemented, rather than contradicted, earlier statements,
16 the agency did not err here because the omission concerned an
17 alleged prior effort to seek refugee status elsewhere, which
18 is information explicitly requested on the asylum application
19 form. See *Ming Zhang v. Holder*, 585 F.3d 715, 726 (2d Cir.
20 2009) (holding that the agency may “draw an adverse inference
21 about petitioner’s credibility based, *inter alia*, on her

1 failure to mention" important details or events in prior
2 statements). Further, as the agency noted, the omission was
3 material because the prior asylum application could have
4 either confirmed or undermined Shi's current asylum claim.
5 See *Hong Fei Gao*, 891 F.3d at 78, 82 (holding that "the
6 probative value of a witness's prior silence on particular
7 facts depends on whether those facts are ones the witness
8 would reasonably have been expected to disclose" and that
9 "[o]missions need not go to the heart of a claim to be
10 considered in adverse credibility determinations, but they
11 must still be weighed in light of the totality of the
12 circumstances and in the context of the record as a whole").

13 Third, having questioned Shi's credibility, the agency
14 reasonably relied on her failure to rehabilitate her
15 testimony with reliable corroborating evidence. See *Biao*
16 *Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007) (per
17 curiam) ("An applicant's failure to corroborate his or her
18 testimony may bear on credibility, because the absence of
19 corroboration in general makes an applicant unable to
20 rehabilitate testimony that has already been called into
21 question."). The agency did not err in declining to afford

1 significant weight to the letters from Shi's family members
2 (her sister, mother, husband, and sister-in-law) as well as
3 a single notice from the family-planning authorities about a
4 2014 IUD inspection because none of the authors was available
5 for cross-examination, and her family members were interested
6 parties. See *Y.C. v. Holder*, 741 F.3d 324, 334 (2d Cir.
7 2013) (deferring to agency's decision to afford little weight
8 to spouse's letter because it was unsworn and from an
9 interested witness); see also *In re H-L-H- & Z-Y-Z-*, 25 I. &
10 N. Dec. 209, 215 (BIA 2010) (letters from an alien's friends
11 and family were insufficient to provide substantial support
12 for the alien's claims because they were from interested
13 witnesses not subject to cross-examination), *overruled on*
14 *other grounds by Hui Lin Huang v. Holder*, 677 F.3d 130, 133-
15 38 (2d Cir. 2012). In addition, Shi testified inconsistently
16 about why she did not submit more than one IUD inspection
17 notice: she testified that notices were sent every three
18 months and when asked to explain the absence of additional
19 notices, she first stated she had some at home in China, and
20 then later said she had lost the notices.

21 Accordingly, given the inconsistency regarding the

1 primary harm, Shi's omission of her residence and request for
2 asylum in France, and the lack of reliable corroboration, the
3 adverse credibility determination is supported by substantial
4 evidence. See *Xiu Xia Lin*, 534 F.3d at 165-66. The adverse
5 credibility determination was dispositive of asylum,
6 withholding of removal, and CAT relief because all three forms
7 of relief were based on the same discredited factual
8 predicate. See *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d
9 Cir. 2006).

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

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