

**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 19th day of February, two thousand twenty.

PRESENT:

DENNIS JACOBS,
JOSÉ A. CABRANES,
JOSEPH F. BIANCO,
Circuit Judges.

GULZAR SINGH,
Petitioner,

v.

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

**18-249
NAC**

FOR PETITIONER: Amy Nussbaum Gell, Gell & Gell,
New York, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant
Attorney General; Jessica A.
Dawgert, Senior Litigation
Counsel; Jacob A. Bashyrov, Trial
Attorney, Office of Immigration
Litigation, United States
Department of Justice, Washington,
DC.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Petitioner Gulzar Singh, a native and citizen of India,
6 seeks review of a December 28, 2017, decision of the BIA
7 affirming a February 16, 2017, decision of an Immigration
8 Judge ("IJ") denying his application for asylum, withholding
9 of removal, and relief under the Convention Against Torture
10 ("CAT"). *In re Gulzar Singh*, No. A206 443 520 (B.I.A. Dec.
11 28, 2017), *aff'g* No. A206 443 520 (Immig. Ct. N.Y. City Feb.
12 16, 2017). We assume the parties' familiarity with the
13 underlying facts and procedural history.

14 Under the circumstances, we have considered both the IJ's
15 and the BIA's opinions "for the sake of completeness."
16 *Wangchuck v. Dep't of Homeland Security*, 448 F.3d 524, 528
17 (2d Cir. 2006). The applicable standards of review are well
18 established. See 8 U.S.C. § 1252(b)(4)(B); *Hong Fei Gao v.*
19 *Sessions*, 891 F.3d 67, 76 (2d Cir. 2018).

20 "Considering the totality of the circumstances, and all
21 relevant factors, a trier of fact may base a credibility
22 determination on . . . the consistency between the

1 applicant's or witness's written and oral statements . . . ,
2 the internal consistency of each such statement, the
3 consistency of such statements with other evidence of
4 record . . . without regard to whether an inconsistency,
5 inaccuracy, or falsehood goes to the heart of the applicant's
6 claim, or any other relevant factor." 8 U.S.C.
7 § 1158(b)(1)(B)(iii). "We defer . . . to an IJ's credibility
8 determination unless, from the totality of the circumstances,
9 it is plain that no reasonable fact-finder could make such an
10 adverse credibility ruling." *Xiu Xia Lin v. Mukasey*, 534
11 F.3d 162, 167 (2d Cir. 2008); accord *Hong Fei Gao*, 891 F.3d
12 at 76. Substantial evidence supports the agency's
13 determination that Singh was not credible as to his claim
14 that members of the Akali Dal Badal attacked him twice in
15 India on account of his membership in a rival political party,
16 the Shiromani Akali Dal Amritsar ("SADA").

17 The agency reasonably relied on inconsistent evidence
18 regarding whether Singh's parents are also affiliated with
19 the SADA Party, and what medicine Singh was given after one
20 of the alleged attacks. See 8 U.S.C. § 1158(b)(1)(B)(iii).
21 Singh did not compellingly explain these inconsistencies.
22 See *Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005) ("A

1 petitioner must do more than offer a plausible explanation
2 for his inconsistent statements to secure relief; he must
3 demonstrate that a reasonable fact-finder would be *compelled*
4 to credit his testimony." (internal quotation marks
5 omitted)).

6 The agency also reasonably found Singh's credibility
7 impugned by his submission of affidavits allegedly prepared
8 by two friends that contained strikingly similar language,
9 including grammatically incorrect phrases. See *Mei Chai Ye*
10 *v. U.S. Dep't of Justice*, 489 F.3d 517, 524 (2d Cir. 2007)
11 ("[T]his court has . . . firmly embraced the commonsensical
12 notion that striking similarities between affidavits are an
13 indication that the statements are canned." (internal
14 quotation marks omitted)); *Singh v. BIA*, 438 F.3d 145, 148
15 (2d Cir. 2006) (holding that "nearly identical language" in
16 affidavits supported adverse credibility determination).
17 Singh did not compellingly explain the similarities. See
18 *Majidi*, 430 F.3d at 80.

19 Having questioned Singh's credibility, the agency
20 reasonably relied further on his failure to rehabilitate his
21 testimony with reliable corroborating evidence. "An
22 applicant's failure to corroborate his or her testimony may

1 bear on credibility, because the absence of corroboration in
2 general makes an applicant unable to rehabilitate testimony
3 that has already been called into question." *Biao Yang v.*
4 *Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007). As discussed
5 above, certain of Singh's corroborating affidavits contained
6 questionably identical language and his medical evidence was
7 inconsistent with his testimony. Further, the agency
8 reasonably noted that Singh failed to submit an affidavit
9 from his father who purportedly took him to the hospital after
10 one alleged attack, or an affidavit or testimony from his
11 brother who is also a SADA member and lives with Singh in the
12 United States.

13 Given the inconsistency, identical affidavits, and
14 corroboration findings, the adverse credibility determination
15 is supported by substantial evidence. See *Xiu Xia Lin*, 534
16 F.3d at 165-66. The agency's adverse credibility
17 determination is dispositive of asylum, withholding of
18 removal, and CAT relief because all three claims are based on
19 the same factual predicate. See *Paul v. Gonzales*, 444 F.3d
20 148, 156-57 (2d Cir. 2006).

21 As the Government argues, Singh does not challenge the
22 agency's denial of a continuance with any specificity and

1 thus we need not consider it. See *Yueqing Zhang v. Gonzales*,
2 426 F.3d 540, 541 n.1, 545 n.7 (2d Cir. 2005). Nevertheless,
3 we note that there is no merit to Singh's argument that the
4 IJ's denial of a continuance violated due process when Singh
5 had more than one year to gather and submit evidence and he
6 has never described his brother's intended testimony or
7 explained how it would overcome the adverse credibility
8 determination. See *Burger v. Gonzales*, 498 F.3d 131, 134 (2d
9 Cir. 2007) ("To establish a violation of due process, an alien
10 must show that []he was denied a full and fair opportunity to
11 present h[is] claims or that [he was] otherwise deprived . .
12 . of fundamental fairness." (internal quotation marks
13 omitted)); *Garcia-Villeda v. Mukasey*, 531 F.3d 141, 149 (2d
14 Cir. 2008) ("Parties claiming denial of due process in
15 immigration cases must, in order to prevail, allege some
16 cognizable prejudice fairly attributable to the challenged
17 process." (internal quotation marks omitted)).

18 For the foregoing reasons, the petition for review is
19 DENIED. All pending motions and applications are DENIED and
20 stays VACATED.

21 FOR THE COURT:
22 Catherine O'Hagan Wolfe,
23 Clerk of Court