

**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.

YUE YE BAO,
Petitioner,

v.

18-2595
NAC

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

FOR PETITIONER: Robert J. Adinolfi, New York, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant
Attorney General; Anthony P.
Nicastro, Assistant Director;
Yanal H. Yousef, Trial Attorney,

1 Office of Immigration Litigation,
2 United States Department of
3 Justice, Washington, DC.
4

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

9 Petitioner Yue Ye Bao, a native and citizen of the
10 People's Republic of China, seeks review of an August 14,
11 2018 decision of the BIA affirming a November 1, 2013 decision
12 of an Immigration Judge ("IJ") denying Bao's application for
13 asylum, withholding of removal, and relief under the
14 Convention Against Torture ("CAT"). *In re Yue Ye Bao*, No.
15 A087 441 647 (B.I.A. Aug. 14, 2018), *aff'g* No. A087 441 647
16 (Immig. Ct. N.Y. City Nov. 1, 2013). We assume the parties'
17 familiarity with the underlying facts and procedural history.

18 Validity of Removal Proceedings

19 Bao first argues that, under the Supreme Court's decision
20 in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), the Notice to
21 Appear ("NTA") charging her as removable was insufficient to
22 vest jurisdiction with the IJ because it did not contain a
23 hearing date or time. We have held, however, that *Pereira*
24 does not "void *jurisdiction* in cases in which an NTA omits a

1 hearing time or place . . . so long as a notice of hearing
2 specifying this information is later sent to the alien.”
3 *Banegas Gomez v. Barr*, 922 F.3d 101, 110, 112 (2d Cir. 2019).
4 Accordingly, because Bao unquestionably received notice of
5 her hearings at which she appeared, her argument that her NTA
6 was insufficient to commence removal proceedings is
7 foreclosed by *Banegas Gomez*.

8 Adverse Credibility Determination

9 Under the circumstances, we have reviewed the IJ’s
10 decision as modified by the BIA, *i.e.*, minus the findings on
11 which the BIA did not rely. See *Xue Hong Yang v. U.S. Dep’t*
12 *of Justice*, 426 F.3d 520, 522 (2d Cir. 2005). The applicable
13 standards of review are well established. See 8 U.S.C.
14 § 1252(b)(4)(B); *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76
15 (2d Cir. 2018).

16 “Considering the totality of the circumstances, and all
17 relevant factors, a trier of fact may base a credibility
18 determination on . . . the inherent plausibility of the
19 applicant’s or witness’s account, the consistency between the
20 applicant’s or witness’s written and oral statements . . .
21 [and] the internal consistency of each such statement . . .
22 without regard to whether an inconsistency, inaccuracy, or

1 falsehood goes to the heart of the applicant's claim."
2 8 U.S.C. § 1158(b)(1)(B)(iii); see also *Xiu Xia Lin v.*
3 *Mukasey*, 534 F.3d 162, 163–64 (2d Cir. 2008). Substantial
4 evidence supports the agency's determination that Bao was not
5 credible as to her claim that family planning officials forced
6 her to terminate a pregnancy and sought to sterilize her for
7 violating China's family planning policy.

8 The agency reasonably relied on a series of
9 inconsistencies in Bao's testimony and between her testimony
10 and other evidence. See 8 U.S.C. § 1158(b)(1)(B)(iii).
11 Bao's testimony that she lived in hiding and on the run from
12 family planning officials was implausible and inconsistent
13 with her testimony that she owned and openly operated a store
14 in Hangzhou for six years, that she owned and openly operated
15 a store in Shanghai for four years, that she twice travelled
16 to Hong Kong to purchase merchandise for her stores, and that
17 she frequently went back to her hometown. Bao's testimony
18 that her husband lived in Inner Mongolia while she lived in
19 hiding by herself in Shanghai was inconsistent with her
20 husband's letter that he moved with her to Shanghai. And Bao
21 made varying statements regarding how much she and her husband
22 were fined under the family planning policy. Similarly, the

1 agency did not err in relying on Bao's mother's failure to
2 mention in her letter that she received a family planning
3 notice directing Bao to report for sterilization. See *Hong*
4 *Fei Gao*, 891 F.3d at 78 ("[T]he probative value of a witness's
5 prior silence on particular facts depends on whether those
6 facts are ones the witness would reasonably have been expected
7 to disclose."). Bao could not compellingly explain these
8 inconsistencies and omissions. See *Majidi v. Gonzales*, 430
9 F.3d 77, 80 (2d Cir. 2005) ("A petitioner must do more than
10 offer a plausible explanation for his inconsistent statements
11 to secure relief; he must demonstrate that a reasonable fact-
12 finder would be *compelled* to credit his testimony." (internal
13 quotation marks omitted)).

14 Having questioned Bao's credibility, the agency
15 reasonably relied further on her failure to rehabilitate her
16 testimony with reliable corroborating evidence. "An
17 applicant's failure to corroborate his or her testimony may
18 bear on credibility, because the absence of corroboration in
19 general makes an applicant unable to rehabilitate testimony
20 that has already been called into question." *Biao Yang v.*
21 *Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007). The agency
22 reasonably declined to credit the letters from Bao's family

1 members because, in addition to the inconsistencies noted
2 above, the authors were interested witnesses who were not
3 available for cross-examination. See *Y.C. v. Holder*, 741
4 F.3d 324, 332 (2d Cir. 2013) (“We generally defer to the
5 agency’s evaluation of the weight to be afforded an
6 applicant’s documentary evidence.”); see also *In re H-L-H- &*
7 *Z-Y-Z-*, 25 I. & N. Dec. 209, 215 (B.I.A. 2010) (finding that
8 letters from alien’s friends and family were insufficient to
9 provide substantial support for alien’s claims because they
10 were from interested witnesses not subject to cross-
11 examination), *overruled on other grounds by Hui Lin Huang v.*
12 *Holder*, 677 F.3d 130, 133–38 (2d Cir. 2012).

13 Given the inconsistency and corroboration findings, the
14 agency’s adverse credibility determination is supported by
15 substantial evidence. See 8 U.S.C. § 1158(b)(1)(B)(iii).
16 That determination was dispositive of asylum, withholding of
17 removal, and CAT relief because all three forms of relief
18 were based on the same factual predicate. See *Paul v.*
19 *Gonzales*, 444 F.3d 148, 156–57 (2d Cir. 2006). Contrary to
20 Bao’s contention, the IJ found her not credible as to the
21 entirety of her testimony, including her forced abortion
22 claim.

1 Competency

2 We need not review the agency's competency determination
3 because Bao has abandoned that issue by not raising it in her
4 brief. See *Yueqing Zhang v. Gonzales*, 426 F.3d 540, 541 n.1,
5 545 n.7 (2d Cir. 2005). Nevertheless, we note that the agency
6 took appropriate measures to determine competency and
7 reasonably concluded that Bao was competent to proceed. See
8 *In re M-A-M-*, 25 I. & N. Dec. 474, 479-83 (B.I.A. 2011).

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

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