

**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 22nd day of January, two thousand twenty.

PRESENT:

**RICHARD C. WESLEY,
PETER W. HALL,
DENNY CHIN,**
Circuit Judges.

AMANPREET SINGH,

Petitioner,

v.

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

Respondent.

**18-372
NAC**

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

FOR RESPONDENT: Joseph H. Hunt, Assistant
Attorney General; Bernard A.
Joseph, Senior Litigation Counsel;
Jonathan K. Ross, Trial Attorney,

Office of Immigration Litigation,
United States Department of
Justice, Washington, DC.

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

Petitioner Amanpreet Singh, a native and citizen of India, seeks review of a January 11, 2018, decision of the BIA affirming an April 5, 2017, decision of an Immigration Judge ("IJ") denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). *In re Singh*, No. A205 421 884 (B.I.A. Jan. 11, 2018), *aff'g* No. A205 421 884 (Immig. Ct. N.Y. City Apr. 5, 2017). We assume the parties' familiarity with the underlying facts and procedural history in this case.

We have reviewed the IJ's decision as modified by the BIA; i.e., minus the IJ's finding that even assuming credibility, Singh did not establish eligibility for asylum and related relief. See *Xue Hong Hang v. U.S. Dep't of Justice*, 426 F.3d 520, 522 (2d Cir. 2005). The standards of review are well established. See 8 U.S.C. § 1252(b)(4)(B);

1 *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018)
2 (reviewing adverse credibility determination for substantial
3 evidence). “Considering the totality of the circumstances,
4 and all relevant factors, a trier of fact may base a
5 credibility determination on . . . the consistency between
6 the applicant’s . . . written and oral statements . . . , the
7 internal consistency of each such statement, [and] the
8 consistency of such statements with other evidence of record
9 . . . without regard to whether an inconsistency, inaccuracy,
10 or falsehood goes to the heart of the applicant’s claim . .
11 . .” 8 U.S.C. § 1158(b)(1)(B)(iii). We conclude that the
12 agency has not identified substantial evidence to support the
13 adverse credibility determination.

14 The agency based its adverse credibility determination
15 on two claimed inconsistencies. First, the agency identified
16 one inconsistency between Singh’s testimony that he was
17 treated with painkillers for his injuries and a medical report
18 that indicated that he received painkillers, antibiotics, and
19 intravenous fluids. Second, while Singh testified he
20 informed S. Narinder Singh, a leader of the political party
21 Singh belonged to, about the two attacks, the agency relied

1 on the fact that a letter from S. Narinder Singh did not
2 specifically mention his attacks by members of a rival party,
3 instead it only confirmed Singh's party membership and that
4 Singh had been persecuted by a rival political party. We
5 have cautioned against putting excessive weight on a third-
6 party's omissions, particularly where, as here, the third
7 party's statement does not contradict the applicant's
8 statements. See *Hong Fei Gao*, 891 F.3d at 81 ("Although an
9 omission by a third party may form a basis for an adverse
10 credibility determination . . . under these circumstances—
11 where a third party's omission creates no *inconsistency* with
12 an applicant's own statements—an applicant's failure to
13 explain third-party omissions is less probative of
14 credibility than an applicant's failure to explain his or her
15 own omissions.").

16 Given the agency's error in relying on this finding, we
17 conclude that remand is necessary because the single
18 inconsistency regarding Singh's medical treatment does not,
19 under the totality of the circumstances, constitute
20 substantial evidence for an adverse credibility
21 determination. See 8 U.S.C. § 1158(b)(1)(B)(iii); *Hong Fei*

1 Gao, 891 F.3d at 76; *cf. Xiu Xia Lin v. Mukasey*, 534 F.3d
2 162, 167 (2d Cir. 2008) (“an IJ may rely on *any* inconsistency
3 or omission in making an adverse credibility determination as
4 long as the ‘totality of the circumstances’ establishes that
5 an asylum applicant is not credible.” (quoting
6 § 1158(b)(1)(B)(iii))). Because the adverse credibility
7 determination was the sole basis for the agency’s denial of
8 Singh’s claim of past persecution, we remand for further
9 consideration of whether Singh met his burden of proof for
10 past persecution, such that he is entitled to a presumption
11 of future persecution. See 8 C.F.R. § 1208.13(b)(1).

12 For the foregoing reasons, the petition for review is
13 GRANTED, the BIA's decision is VACATED, and the case is
14 REMANDED for further proceedings consistent with this
15 order.

16 FOR THE COURT:
17 Catherine O'Hagan Wolfe,
18 Clerk of Court