

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

AMENDED 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 23rd day of January, two thousand twenty.

PRESENT:

**JON O. NEWMAN,
JOHN M. WALKER, JR.,
Circuit Judges.¹**

**XIU LAN SUN,
Petitioner,**

v.

**18-424
NAC**

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

FOR PETITIONER: Mike P. Gao, Flushing, NY.

FOR RESPONDENT: Chad A. Readler Acting Assistant
Attorney General; Russell J.E.
Verby, Senior Litigation Counsel;

¹ Judge Christopher F. Droney, who was originally assigned to the panel, retired from the Court, effective January 1, 2020, prior to the resolution of this case. The remaining two members of the panel, who are in agreement, have determined the matter. See 28 U.S.C. § 46(d); 2d Cir. IOP E(b); *United States v. Desimone*, 140 F.3d 457, 458-59 (2d Cir. 1998).

1 John D. Williams, Trial Attorney,
2 Office of Immigration Litigation,
3 United States Department of
4 Justice, Washington, DC.
5

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 Xiu Lan Sun, a native and citizen of the
11 People's Republic of China, seeks review of a February 6,
12 2018, decision of the BIA affirming a May 17, 2017, decision
13 of an Immigration Judge ("IJ") denying Sun's application for
14 asylum, withholding of removal, and relief under the
15 Convention Against Torture ("CAT"). *In re Xiu Lan Sun*, No.
16 A205 631 399 (B.I.A. Feb. 6, 2018), *aff'g* No. A205 631 399
17 (Immig. Ct. N.Y. City May 17, 2017). We assume the parties'
18 familiarity with the underlying facts and procedural history
19 in this case.

20 We have reviewed both the BIA's and IJ's decisions. See
21 *Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005).
22 The applicable standards of review are well established. See
23 8 U.S.C. § 1252(b)(4)(B); *Hong Fei Gao v. Sessions*, 891 F.3d
24 67, 76-77 (2d Cir. 2018). In making a credibility
25 determination, the agency must "[c]onsider[] the totality of

1 the circumstances" and may base a finding on the applicant's
2 "demeanor, candor, or responsiveness . . . , the inherent
3 plausibility of the applicant's . . . account,"
4 inconsistencies in the applicant's statements or between her
5 statements and other evidence, "without regard to whether an
6 inconsistency, inaccuracy, or falsehood goes to the heart of
7 the applicant's claim, or any other relevant factor."
8 8 U.S.C. § 1158(b)(1)(B)(iii). "We defer . . . to an IJ's
9 credibility determination unless, from the totality of the
10 circumstances, it is plain that no reasonable fact-finder
11 could make such an adverse credibility ruling." *Xiu Xia Lin*
12 *v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008); accord *Hong Fei*
13 *Gao*, 891 F.3d at 76. As discussed below, substantial
14 evidence supports the adverse credibility determination.

15 The IJ reasonably concluded that Sun's written statements
16 and testimony offered varying accounts of her alleged
17 persecution—that she was required to have an intrauterine
18 device ("IUD") in 1986, have pregnancy checks thereafter, and
19 was forced to have an abortion in 2004. See 8 U.S.C.
20 § 1158(b)(1)(B)(iii); *Xiu Xia Lin*, 534 F.3d at 163–64, 166–
21 67. In her written statements, Sun represented that she was
22 required to have an IUD after she had her first child and
23 when family planning officials discovered she was pregnant

1 with a second child, they “demanded” that she have an abortion
2 and took her to an operating room where she underwent the
3 procedure. But Sun testified that family planning officers
4 restrained her while a nurse implanted her IUD, and a family
5 planning officer held her down during her abortion. The IJ
6 was not compelled to accept Sun’s explanation that an attorney
7 prepared the statement as it failed to account for the
8 omission of the allegations of physical force, particularly
9 as the IJ had explicitly requested a more detailed written
10 statement. See *Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir.
11 2005)(“A petitioner must do more than offer a plausible
12 explanation for h[er] inconsistent statements to secure
13 relief; [s]he must demonstrate that a reasonable fact-finder
14 would be *compelled* to credit h[er] testimony.” (internal
15 quotation marks omitted)).

16 Similarly, Sun’s written statements failed to mention
17 her employment at a state-owned factory, much less any adverse
18 workplace repercussions stemming from her abortion. In
19 contrast, Sun testified that after her abortion, her salary
20 was reduced, and she was targeted for disciplinary
21 infractions. The IJ was not required to accept Sun’s
22 explanation that she did not know to include these facts and
23 was entitled to rely on these omissions as they were direct

1 consequences of her violation of the family planning policy
2 that a credible petitioner would be expected to disclose under
3 the circumstances. See *id*; *Hong Fei Gao*, 891 F.3d at 78–79.

4 The IJ also reasonably concluded that aspects of Sun’s
5 testimony were implausible and more consistent with a
6 voluntary abortion, given that she testified to lesser
7 restrictions—birth control pills that she voluntarily ceased
8 using without consequence rather than an IUD—after the
9 abortion. See 8 U.S.C. § 1158(b)(1)(B)(iii); see *Siewe v.*
10 *Gonzales*, 480 F.3d 160, 168–69 (2d Cir. 2007) (“[S]peculation
11 that inheres in inference is not ‘bald’ if the inference is
12 made available to the factfinder by record facts . . . in the
13 light of common sense and ordinary experience.”). Nor did
14 the IJ err in relying on Sun’s three voluntary returns to
15 China prior to seeking asylum in the United States, as
16 undermining Sun’s fear of future harm. See *Kone v. Holder*,
17 596 F.3d 141, 150–51 (2d Cir. 2010) (holding that while
18 “return trips alone are insufficient to establish lack of
19 credibility,” an IJ may consider them in connection with other
20 findings).

21 The IJ also reasonably relied on Sun’s lack of reliable
22 corroboration. “An applicant’s failure to corroborate his
23 or her testimony may bear on credibility, because the absence

1 of corroboration in general makes an applicant unable to
2 rehabilitate testimony that has already been called into
3 question." *Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir.
4 2007). As the IJ found, Sun had no employment or medical
5 records to substantiate her claim. See *Chuilu Liu v. Holder*,
6 575 F.3d 193, 198 (2d Cir. 2009) ("[T]he alien bears the
7 ultimate burden of introducing [corroborating] evidence.").
8 The IJ did not err in declining to credit the letter from
9 Sun's mother as it did not mention the IUD or workplace issues
10 or give any detail about the abortion, and it was from an
11 interested witness not subject to cross-examination. See
12 *Y.C. v. Holder*, 741 F.3d 324, 334 (2d Cir. 2013) (deferring
13 to agency's decision to afford little weight to spouse's
14 letter from China because it was unsworn and from an
15 interested witness); *Matter of H-L-H- & Z-Y-Z-*, 25 I. & N.
16 Dec. 209, 215 (B.I.A. 2010) (finding that letters from alien's
17 friends and family were insufficient support for claims
18 because they were from interested witnesses not subject to
19 cross-examination), *overruled on other grounds by Hui Lin*
20 *Huang v. Holder*, 677 F.3d 130, 133-38 (2d Cir. 2012).

21 Given the variance among Sun's written statements and
22 testimony, the implausible aspects of her claim, her multiple
23 returns to China, and the lack of corroboration, the "totality

1 of the circumstances" supports the adverse credibility
2 determination. See 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia*
3 *Lin*, 534 F.3d at 167. That determination is dispositive of
4 asylum, withholding of removal, and CAT relief because all
5 three claims are based on the same factual predicate. See
6 *Paul v. Gonzales*, 444 F.3d 148, 156–57 (2d Cir. 2006).

7 For the foregoing reasons, the petition for review is
8 DENIED. As we have completed our review, any stay of removal
9 that the Court previously granted in this petition is VACATED,
10 and any pending motion for a stay of removal in this petition
11 is DISMISSED as moot. Any pending request for oral argument
12 in this petition is DENIED in accordance with Federal Rule of
13 Appellate Procedure 34(a)(2), and Second Circuit Local Rule
14 34.1(b).

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