

**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 13th 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;
John D. Williams, Trial Attorney,

¹ The panel originally included Circuit Judge Christopher F. Droney, who fully retired from the court on December 31, 2019. This case is decided by the remaining two judges, consistent with section E(b) of the Internal Operating Procedures of the Second Circuit.

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 DENIED.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 FOR THE COURT:
15 Catherine O’Hagan Wolfe,
16 Clerk of Court
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