

**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 10th day of April, two thousand twenty.

PRESENT:

JOSÉ A. CABARANES,
SUSAN L. CARNEY,
RICHARD J. SULLIVAN,
Circuit Judges.

MENGJIE LI,
Petitioner,

v.

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

18-469
NAC

FOR PETITIONER: Wei Gu, Esq., Albertson, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant Attorney General; John S. Hogan, Assistant Director; Todd J. Cochran, 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 Mengjie Li, a native and citizen of the
6 People's Republic of China, seeks review of a January 24,
7 2018 decision of the BIA affirming a June 1, 2017 decision of
8 an Immigration Judge ("IJ") denying his application for
9 asylum, withholding of removal, and relief under the
10 Convention Against Torture ("CAT"). *In re Mengjie Li*, No.
11 A206 570 449 (B.I.A. Jan. 24, 2018), *aff'g* No. A206 570 449
12 (Immig. Ct. N.Y. City June 1, 2017). We assume the parties'
13 familiarity with the underlying facts and procedural history
14 in this case.

15 We have reviewed the decisions of both the IJ and the
16 BIA. See *Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 394 (2d
17 Cir. 2005). The standards of review are well established.
18 See 8 U.S.C. § 1252(b)(4)(B); *Hong Fei Gao v. Sessions*, 891
19 F.3d 67, 76 (2d Cir. 2018). "Considering the totality of the
20 circumstances, and all relevant factors, a trier of fact may
21 base a credibility determination on the demeanor, candor, or
22 responsiveness of the applicant . . . , the consistency
23 between the applicant's or witness's written and oral

1 statements . . . , the internal consistency of each such
2 statement, the consistency of such statements with other
3 evidence of record . . . , and any inaccuracies or falsehoods
4 in such statements, 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. Under the totality of the circumstances,
13 substantial evidence supports the adverse credibility
14 determination given the demeanor finding, Li's lack of
15 familiarity with his documentary evidence, and Li's failure
16 to provide reliable corroborating documents.

17 The agency did not err in relying on Li's initial lack
18 of responsiveness. An IJ may base a credibility
19 determination on the "demeanor, candor, or responsiveness of
20 the applicant." 8 U.S.C. § 1158(b)(1)(B)(iii). "We give
21 particular deference to credibility determinations that are
22 based on the adjudicator's observation of the applicant's
23 demeanor, in recognition of the fact that the IJ's ability to

1 observe the witness's demeanor places her in the best position
2 to evaluate whether apparent problems in the witness's
3 testimony suggest a lack of credibility or, rather, can be
4 attributed to an innocent cause such as difficulty
5 understanding the question." *Jin Chen v. U.S. Dep't of*
6 *Justice*, 426 F.3d 104, 113 (2d Cir. 2005). The record
7 supports the IJ's conclusion that Li was not responsive when
8 asked his reason for being in the United States, as he had to
9 be asked four times before he provided a reason relating to
10 his alleged persecution.

11 The IJ also reasonably relied on Li's lack of familiarity
12 with his own evidence and the resulting inconsistency between
13 his testimony and the record. See 8 U.S.C.
14 § 1158(b)(1)(B)(iii). Li testified that he had no documents
15 related to his arrest, and when confronted with a document he
16 submitted from the Public Security Bureau describing his
17 arrest and punishment, he stated he was unaware that it had
18 been submitted. That document contradicted Li's assertion
19 that he had not received any documents from the government
20 related to his arrest.

21 In addition to these problems with Li's testimony and
22 evidence, the agency relied on the fact that Li testified to
23 details – a police visit to his school and a two-day

1 hospitalization – that were not included in his application
2 or a letter from his parents. But while it could be argued
3 that the agency overemphasized these omissions, which were
4 not inconsistent with Li's oral statements, *Hong Fei Gao*, 891
5 F.3d at 78–81, the agency reasonably questioned Li's
6 credibility based on his unresponsiveness and inconsistency
7 regarding the documentary evidence of his arrest and Li's
8 failure to rehabilitate his testimony with reliable
9 corroborating evidence.

10 "An applicant's failure to corroborate his or her
11 testimony may bear on credibility, because the absence of
12 corroboration in general makes an applicant unable to
13 rehabilitate testimony that has already been called into
14 question." *Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir.
15 2007). First, Li did not corroborate the basis of his claim
16 because he did not provide a copy of the article he allegedly
17 wrote or proof of the existence of the website he published
18 the article on. Second, the IJ was not required to give
19 significant weight to the letter from Li's parents because it
20 did not confirm his alleged two-day hospitalization and it
21 was from interested parties who were unavailable for cross-
22 examination. See *Y.C. v. Holder*, 741 F.3d 324, 332, 334 (2d
23 Cir. 2013) (explaining that "[w]e generally defer to the

1 agency's evaluation of the weight to be afforded an
2 applicant's documentary evidence" and deferring to IJ's
3 decision to afford little weight to letter from spouse in
4 China). Third, the IJ did not err in declining to give weight
5 to the document from the Public Security Bureau, given that
6 Li testified that he had never received such a document and
7 had not been aware that it was submitted in support of his
8 application. Last, while Li's hospital record stated that
9 he was treated after being beaten and detained by the police
10 in 2011, the IJ was not required to afford it significant
11 weight because it did not confirm Li's testimony that he spent
12 two nights at the hospital. See *id.* at 332.

13 Accordingly, given the demeanor finding, Li's lack of
14 familiarity with his documentary evidence, and the absence of
15 reliable corroboration, substantial evidence supports the
16 agency's adverse credibility determination. See 8 U.S.C.
17 § 1158(b)(1)(B)(iii); *Xiu Xia Lin*, 534 F.3d at 167; *Biao Yang*,
18 496 F.3d at 273. That determination is dispositive of
19 asylum, withholding of removal, and CAT relief, because all
20 three claims were based on the same factual predicate. See
21 *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006).

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1 For the foregoing reasons, the petition for review is
2 DENIED. All pending motions and applications are DENIED and
3 stays VACATED.

4 FOR THE COURT:
5 Catherine O'Hagan Wolfe,
6 Clerk of Court