

**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 17th day of March, two thousand twenty.

PRESENT:

JOSÉ A. CABRANES,
RAYMOND J. LOHIER, Jr.,
STEVEN J. MENASHI,
Circuit Judges.

NAOMI KALALA,
Petitioner,

v.

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

18-791
NAC

FOR PETITIONER: Thomas V. Massucci, New York, NY.

FOR RESPONDENT: Joseph H. Hunt, Assistant Attorney General; John S. Hogan, Assistant Director; Lindsay Corliss, Trial Attorney; Office of Immigration

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

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

8 Petitioner Naomi Kalala, a native and citizen of the
9 Democratic Republic of the Congo, seeks review of a February
10 26, 2018 decision of the BIA affirming an April 20, 2017
11 decision of an Immigration Judge ("IJ") denying Kalala's
12 application for asylum, withholding of removal, and relief
13 under the Convention Against Torture ("CAT"). *In re Naomi*
14 *Kalala*, No. A 205 826 228 (B.I.A. Feb. 26, 2018), *aff'g* No. A
15 205 826 228 (Immig. Ct. N.Y.C.Apr. 20, 2017). We assume the
16 parties' familiarity with the underlying facts and procedural
17 history.

18 Under the circumstances of this case, we review both the
19 IJ's and BIA's decisions "for the sake of completeness." See
20 *Wangchuck v. Dep't of Homeland Sec., Immigration & Customs*
21 *Enf't*, 448 F.3d 524, 528 (2d Cir. 2006). The applicable
22 standards of review are well established. See 8 U.S.C.
23 § 1252(b)(4)(B); *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76
24 (2d Cir. 2018) (reviewing adverse credibility determination

1 under a substantial evidence standard). The governing REAL
2 ID Act credibility standard provides as follows:

3 Considering the totality of the circumstances, and
4 all relevant factors, a trier of fact may base a
5 credibility determination on . . . the consistency
6 between the applicant's or witness's written and
7 oral statements . . . , the internal consistency of
8 each such statement, the consistency of such
9 statements with other evidence of record . . . , and
10 any inaccuracies or falsehoods in such statements,
11 without regard to whether an inconsistency,
12 inaccuracy, or falsehood goes to the heart of the
13 applicant's claim, or any other relevant factor.

14
15 8 U.S.C. § 1158(b)(1)(B)(iii). We "defer . . . to an IJ's
16 credibility determination unless, from the totality of the
17 circumstances, it is plain that no reasonable fact-finder
18 could make such an adverse credibility ruling." *Xiu Xia Lin*
19 *v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008); accord *Hong Fei*
20 *Gao*, 891 F.3d at 76. Substantial evidence supports the
21 agency's adverse credibility determination.

22 The agency was entitled to rely on the asylum interview
23 record in assessing Kalala's credibility. The agency may
24 rely on the record of an asylum interview if the record
25 contains a "meaningful, clear, and reliable summary of the
26 statements made by [the applicant] at the interview." *Diallo*
27 *v. Gonzales*, 445 F.3d 624, 632 (2d Cir. 2006) (citation and
28 internal quotation marks omitted). Asylum interviews do not
29 require the same special scrutiny as airport or credible fear

1 interviews because they "take place after the alien has
2 arrived in the United States, has taken the time to submit a
3 formal asylum application, and has had the opportunity to
4 gather his or her thoughts, to prepare for the interview, and
5 to obtain counsel." *Id.* In this case, the record contains
6 the asylum officer's notes reflecting the questions and
7 Kalala's answers, and a typed assessment of Kalala's claim.
8 Kalala argues that the non-responsive and conflicting answers
9 in the asylum interview record are evidence that the record
10 was not reliable. But a factfinder could conclude that the
11 conflicting answers were the result of Kalala's fabrication,
12 not her lack of English fluency. When competing inferences
13 can be drawn from the evidence, we defer to the IJ. See
14 *Siewe v. Gonzales*, 480 F.3d 160, 167 (2d Cir. 2007).

15 The agency also did not err in relying on the
16 inconsistency among Kalala's asylum application, asylum
17 interview, and testimony regarding whether she had two
18 children. Kalala listed her nieces as her children on her
19 asylum application and testified that she did so because she
20 was taking care of them and they were staying with her. The
21 IJ was not required to accept this explanation, particularly
22 as Kalala testified that she was not taking care of them at
23 the time she filed her asylum application. See *Majidi v.*

1 *Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005) (“A petitioner must
2 do more than offer a plausible explanation for his
3 inconsistent statements to secure relief; he must demonstrate
4 that a reasonable fact-finder would be *compelled* to credit
5 his testimony.” (internal quotation marks and citations
6 omitted)).

7 The record supports the agency’s reliance on additional
8 inconsistencies. Kalala’s testimony and statements at the
9 asylum interview were inconsistent regarding the location of
10 the children. The asylum interview record and asylum
11 application were inconsistent regarding where she was raped.
12 And her testimony and documentary evidence were inconsistent
13 regarding whether she had a miscarriage following the rape.

14 The agency also did not err in determining that Kalala’s
15 use of a false passport to obtain a U.S. visa in South Africa
16 undermined her credibility. See 8 U.S.C. § 1158(b)(1)(B)(iii)
17 (explaining that IJ may rely on falsehoods in any statement
18 “without regard to whether . . . [it] goes to the heart of
19 the applicant’s claim”). Making false statements to flee
20 persecution is consistent with the pursuit of asylum, and it
21 is “unreasonable” to “penalize an applicant for lying to
22 escape a country where he or she faces persecution.” *Rui*
23 *Ying Lin v. Gonzales*, 445 F.3d 127, 134 (2d Cir. 2006). But

1 here the agency reasonably determined that Kalala was not
2 directly fleeing persecution at the time that she used the
3 false passport. See *Mei Fun Wong v. Holder*, 633 F.3d 64, 72
4 (2d Cir. 2011) (“[P]ersecution is an extreme concept that
5 does not include every sort of treatment our society regards
6 as offensive.” (internal quotation marks omitted)).

7 Finally, two physician affidavits provided by Kalala do
8 not compel the conclusion that Kalala was credible. See *Xiu*
9 *Xia Lin*, 534 F.3d at 167 (“We defer . . . to an IJ’s
10 credibility determination unless . . . it is plain that no
11 reasonable fact-finder could make such an adverse credibility
12 ruling.”); see also *Hong Fei Gao*, 891 F.3d at 79 (“review of
13 an agency’s adverse credibility determination is conducted on
14 the record as a whole” (internal quotation marks omitted)).
15 While a physician’s evaluation provided evidence that Kalala
16 was harmed, it did not corroborate that she was harmed on
17 account of her husband’s political activities. Similarly,
18 an affidavit signed by a psychiatrist would not necessarily
19 compel a reasonable factfinder to find Kalala credible. See
20 *Xiu Xia Lin*, 534 F.3d at 167; cf. *Hong Fei Gao*, 891 F.3d at
21 81 (determining that omissions were entitled to little weight
22 in part because “when considering the record as a whole, there
23 was corroborating evidence of petitioners’ claims” of past

1 persecution by authorities (internal quotation marks and
2 citation omitted)).

3 Given the inconsistencies among Kalala's testimony,
4 application, asylum interview record, and medical documents,
5 substantial evidence supports the adverse credibility
6 determination. See 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia*
7 *Lin*, 534 F.3d at 167. Because all of Kalala's claims were
8 based on the same factual predicate, the adverse credibility
9 determination is dispositive of asylum, withholding of
10 removal, and CAT relief. See *Paul v. Gonzales*, 444 F.3d 148,
11 156-57 (2d Cir. 2006).

12 For the foregoing reasons, the petition for review is
13 DENIED. All pending motions and applications are DENIED and
14 stays VACATED.

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