

**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 16th day of January, two thousand twenty.

PRESENT:

**BARRINGTON D. PARKER,
MICHAEL H. PARK,
*Circuit Judges.*¹**

**ABDUL F. ISMAIL
*Petitioner,***

v.

**18-983
NAC**

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

FOR PETITIONER: Megan E. Kludt, Northampton, MA.

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 **FOR RESPONDENT:**

Joseph H. Hunt, Assistant Attorney
General; Jeffery R. Leist, Senior
Litigation Counsel; Yedidya Cohen,
Trial Attorney, Office of
Immigration Litigation, United
States Department of Justice,
Washington, DC.

8 UPON DUE CONSIDERATION of this petition for review of a
9 Board of Immigration Appeals ("BIA") decision, it is hereby
10 ORDERED, ADJUDGED, AND DECREED that the petition for review
11 is DENIED in part and DISMISSED in part.

12 Petitioner Abdul F. Ismail, a native and citizen of
13 Ghana, seeks review of a March 29, 2018, decision of the BIA
14 affirming an October 4, 2017, decision of an Immigration Judge
15 ("IJ") denying Ismail's application for asylum, withholding
16 of removal, and relief under the Convention Against Torture
17 ("CAT") and denying his motion to continue his proceedings to
18 await a decision from U.S. Citizenship and Immigration
19 Services ("USCIS"). *In re Abdul F. Ismail*, No. A 206 514 530
20 (B.I.A. Mar. 29, 2019), *aff'g* No. A 206 514 530 (Immig. Ct.
21 Hartford Oct. 4, 2017). We assume the parties' familiarity
22 with the underlying facts and procedural history in this case.

1 Asylum, Withholding of Removal, and CAT

2 Under the circumstances of this case, we have reviewed
3 both the BIA's and IJ's decisions. See *Yun-Zui Guan v.*
4 *Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005). The applicable
5 standards of review are well established. See 8 U.S.C.
6 § 1252(b)(4); *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d
7 Cir. 2018); *Chuilu Liu v. Holder*, 575 F.3d 193, 196 (2d Cir.
8 2009). Ismail claimed that he was targeted in Ghana because
9 he was perceived as gay and that he would be targeted again
10 if he returned.

11 The agency did not err in finding that Ismail failed to
12 meet his burden of proof.

13 The testimony of the applicant may be sufficient to
14 sustain the applicant's burden without
15 corroboration, but only if the applicant satisfies
16 the trier of fact that the applicant's testimony is
17 credible, is persuasive, and refers to specific
18 facts sufficient to demonstrate that the applicant
19 is a refugee. In determining whether the applicant
20 has met the applicant's burden, the trier of fact
21 may weigh the credible testimony along with other
22 evidence of record. Where the trier of fact
23 determines that the applicant should provide
24 evidence that corroborates otherwise credible
25 testimony, such evidence must be provided unless the
26 applicant does not have the evidence and cannot
27 reasonably obtain the evidence.

28
29 8 U.S.C. § 1158(b)(1)(B)(ii); see also *Chuilu Liu*, 575 F.3d

1 at 196–98. The IJ need not specify the points of testimony
2 that require corroboration prior to the IJ’s disposition of
3 the claim because “the alien bears the ultimate burden of
4 introducing such evidence without prompting from the IJ.”
5 *Chuilu Liu*, 575 F.3d at 198. “No court shall reverse a
6 determination made by a trier of fact with respect to the
7 availability of corroborating evidence . . . unless the court
8 finds . . . that a reasonable trier of fact is compelled to
9 conclude that such corroborating evidence is unavailable.”
10 8 U.S.C. § 1252(b)(4).

11 The IJ reasonably required corroboration given that
12 Ismail admitted he lied under oath to immigration officials
13 both during his visa interview in 2011 and to border officials
14 when he came to the United States in 2013. See 8 U.S.C.
15 § 1158(b)(1)(B)(iii) (IJ may rely on falsehoods in any
16 statement “without regard to whether . . . [it] goes to the
17 heart of the applicant’s claim”); *id.* § 1158(b)(1)(B)(ii)
18 (requiring IJ to weigh testimony and corroborating evidence).
19 Ismail attempted to obtain a visa in 2011 by falsely claiming
20 that he was enrolled in college in Ghana and was part of a
21 student-exchange program. And when he entered the United

1 States in 2013, he told border officials that he came to the
2 United States by boat when, in fact, he flew from Ghana to
3 Mexico City. The agency was not required to accept Ismail's
4 explanation that he was scared of having to return to Ghana,
5 because he did not explain why he believed he would be sent
6 back if he told the truth regarding his travel. See *Majidi*
7 *v. Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005) ("A petitioner
8 must do more than offer a plausible explanation for . . .
9 inconsistent statements to secure relief; he must demonstrate
10 that a reasonable fact-finder would be *compelled* to credit
11 his testimony." (internal quotations omitted)). While making
12 false statements to flee persecution is consistent with the
13 pursuit of asylum, see *Rui Ying Lin v. Gonzales*, 445 F.3d
14 127, 134 (2d Cir. 2006), the agency did not err in relying on
15 these false statements because Ismail was not fleeing
16 persecution when he lied to obtain a visa years before the
17 events giving rise to his asylum claim and he lied to border
18 officials after he arrived in the United States.

19 Because Ismail's credibility was in question, the agency
20 properly looked to his corroborating evidence to determine
21 whether he could meet his burden of proof. See 8 U.S.C.

1 § 1158(b)(1)(B)(ii). Primarily, Ismail produced only copies
2 of documents and stated that his friend who was applying for
3 asylum in New York had the originals, including the original
4 of Ismail's mother's affidavit and her death certificate that
5 allegedly proved she died a few years after the 2013 attack
6 as a result of her injuries. The IJ did not err in requiring
7 originals. See Immigration Court Practice Manual, Chapt.
8 3.3(d)(iii) (providing that alien must file photocopies, but
9 must make original documents available at hearings). Nor did
10 the IJ err in finding that Ismail should have presented
11 testimony or a statement his friend who had been at the heart
12 of the events in Ghana. Although Ismail stated that his
13 friend's lawyer had advised him not to appear as a witness,
14 Ismail did not explain why he had not obtained the originals
15 of the documents or a written statement. See 8 U.S.C.
16 § 1252(b)(4) (stating that a court may not reverse a finding
17 that evidence is available unless a factfinder would be
18 compelled to find it unavailable).

19 Nor did the IJ err in declining to give weight to the
20 photocopies of documents in the record. See *Y.C. v. Holder*,
21 741 F.3d 324, 332 (2d Cir. 2013) ("We generally defer to the

1 agency's evaluation of the weight to be afforded an
2 applicant's documentary evidence."). The IJ reasonably found
3 that Ismail's mother's death certificate was suspect because
4 it listed the cause of death as "severe hand injury and broken
5 legs due to attack" but Ismail's mother died four years after
6 the attack. The IJ was not required to credit Ismail's
7 explanation that his mother died from an infection due to the
8 injuries she sustained because there is nothing in the record
9 to confirm that statement, and other medical documents dated
10 2013 reflect that she had a leg fracture and a broken arm,
11 but "got treated and became fit." Although "the agency
12 cannot base an adverse credibility determination solely on a
13 speculative finding that the applicant has submitted
14 inauthentic documents in support of his application" if the
15 testimony is "otherwise credible, consistent and compelling,"
16 *Niang v. Mukasey*, 511 F.3d 138, 141 (2d Cir. 2007), the IJ
17 did not err in declining to credit Ismail's evidence given
18 the credibility problems and lack of original documents.
19 Because Ismail did not demonstrate credibility or otherwise
20 meet his burden of proof for asylum, he necessarily did not
21 meet his burden for withholding of removal and CAT relief

1 because all three forms of relief were based on the same
2 factual predicate. See *Paul v. Gonzales*, 444 F.3d 148, 156-
3 57 (2d Cir. 2006).

4 Motion for a Continuance

5 Ismail challenges the agency's denial of his motion to
6 continue proceedings to await ruling on adjustment of
7 status by USCIS. After the conclusion of Ismail's removal
8 proceedings, USCIS denied Ismail's application.

9 Accordingly, we agree with the government that any
10 challenge to the denial of a continuance is moot. See
11 *Qureshi v. Gonzales*, 442 F.3d 985, 987-90 (7th Cir. 2006)
12 ("A remand now would effectuate no change in the case
13 [because the] basis for a continuance no longer exists.");
14 see also *Church of Scientology of California v. United*
15 *States*, 506 U.S. 9, 12 (1992) ("[I]f an event occurs while
16 a case is pending on appeal that makes it impossible for
17 the court to grant any effectual relief whatever to a
18 prevailing party, the appeal must be dismissed." (internal
19 quotation marks omitted)).

20 For the foregoing reasons, the petition for review is
21 DENIED as to asylum, withholding of removal, and CAT relief,

1 and DISMISSED as moot as to the denial of a continuance. All
2 pending motions and applications are DENIED and stays
3 VACATED.

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