

**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 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 9<sup>th</sup> day of October, two thousand twenty-four.

**PRESENT:**

JON O. NEWMAN,  
SUSAN L. CARNEY,  
WILLIAM J. NARDINI,  
*Circuit Judges.*

WEN XIAN WANG,  
*Petitioner,*

v.

MERRICK B. GARLAND, UNITED  
STATES ATTORNEY GENERAL,  
*Respondent.*

22-6529  
NAC

1   **FOR PETITIONER:**                                Thomas V. Massucci, Esq., New York, NY.

2  
3   **FOR RESPONDENT:**                              Brian Boynton, Principal Deputy Assistant  
4     Attorney General; Sabatino F. Leo, Assistant  
5     Director; Jaclyn G. Hagner, Trial Attorney,  
6     Office of Immigration Litigation, United  
7     States Department of Justice, Washington,  
8     DC.

9                UPON DUE CONSIDERATION of this petition for review of a Board of  
10    Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND  
11    DECREED that the petition for review is DENIED.

12              Petitioner Wen Xian Wang, a native and citizen of the People’s Republic of  
13    China, seeks review of an October 19, 2022, decision of the BIA affirming a June  
14    17, 2019, decision of an Immigration Judge (“IJ”) finding Wang’s testimony not  
15    credible, and therefore denying his application for asylum, withholding of  
16    removal, and relief under the Convention Against Torture (“CAT”). *In re Wen*  
17    *Xian Wang*, No. A209 383 792 (B.I.A. Oct. 19, 2022), *aff’g* No. A209 383 792 (Immigr.  
18    Ct. N.Y.C. June 17, 2019). We assume the parties’ familiarity with the underlying  
19    facts and procedural history.

20              We have reviewed the IJ’s decision as modified by the BIA and consider  
21    only those grounds for the adverse credibility determination that the BIA relied  
22    on. *See Xue Hong Yang v. U.S. Dep’t of Just.*, 426 F.3d 520, 522 (2d Cir. 2005). “We

1 review *de novo* questions of law and the application of law to fact,” and “[w]e  
2 review the agency’s factual findings, including adverse credibility findings, under  
3 the substantial evidence standard.” *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d  
4 Cir. 2018). “[T]he administrative findings of fact are conclusive unless any  
5 reasonable adjudicator would be compelled to conclude to the contrary.”  
6 8 U.S.C. § 1252(b)(4)(B).

7 “Considering the totality of the circumstances, and all relevant factors, a  
8 trier of fact may base a credibility determination on . . . the consistency between  
9 the applicant’s or witness’s written and oral statements (whenever made and  
10 whether or not under oath, and considering the circumstances under which the  
11 statements were made), the internal consistency of each such statement, the  
12 consistency of such statements with other evidence of record . . . , and any  
13 inaccuracies or falsehoods in such statements, without regard to whether an  
14 inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim,  
15 or any other relevant factor.” *Id.* § 1158(b)(1)(B)(iii). “We defer . . . to an IJ’s  
16 credibility determination unless, from the totality of the circumstances, it is plain  
17 that no reasonable fact-finder could make such an adverse credibility ruling.”

1 *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008); accord *Hong Fei Gao*, 891  
2 F.3d at 76.

3 Wang alleged that he became involved in Christianity in China in 2008, and  
4 that he attended an “underground” church every Sunday until October of that  
5 year, when the police raided a church gathering and arrested and detained him.  
6 He alleged that he was held for one month until his father paid a bribe for his  
7 release and he promised to stop attending church. He alleged that he had to  
8 report to the police monthly, but resumed attending church in 2016, only to be  
9 arrested again and detained for 15 days. The IJ determined that Wang’s  
10 allegations were not credible, and the BIA affirmed. Substantial evidence  
11 supports the agency’s determination.

12 First, Wang did not mention the alleged 2016 arrest and detention during a  
13 border interview conducted by a Customs and Border Protection Officer on  
14 September 3, 2016, shortly after Wang was apprehended entering the United  
15 States. The agency reasonably relied on this omission. The agency “may rely on  
16 any inconsistency or omission in making an adverse credibility determination as  
17 long as the ‘totality of the circumstances’ establishes that an asylum applicant is  
18 not credible.” *Xiu Xia Lin*, 534 F.3d at 167 (quoting 8 U.S.C. § 1158(b)(1)(B)(iii)).

1 Although we have cautioned that “in general omissions are less probative of  
2 credibility than inconsistencies created by direct contradictions in evidence and  
3 testimony,” “the probative value of a witness’s prior silence on particular facts  
4 depends on whether those facts are ones the witness would reasonably have been  
5 expected to disclose.” *Hong Fei Gao*, 891 F.3d at 78 (quotation marks omitted).

6 The 2016 arrest was one of only two incidents of persecution, and was the one  
7 closest in time to the interview, occurring less than three months before Wang  
8 entered the United States. Accordingly, he would reasonably be expected to  
9 remember and mention that incident given that he mentioned an arrest eight years  
10 earlier in 2008. *See Jian Liang v. Garland*, 10 F.4th 106, 115 (2d Cir. 2021) (upholding  
11 adverse credibility determination where petitioner omitted “critical information”  
12 that petitioner “would reasonably have been expected to disclose much earlier”).

13 The agency was not required to credit his explanation that he was afraid or could  
14 not remember. *See Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005) (“A petitioner  
15 must do more than offer a plausible explanation for his inconsistent statements to  
16 secure relief; he must demonstrate that a reasonable fact-finder would be *compelled*  
17 to credit his testimony.” (quotation marks omitted)); *see also Ming Zhang v. Holder*,  
18 585 F.3d 715, 722 (2d Cir. 2009) (finding that “[p]etitioner’s subsequent assertions

1 that she was ‘nervous’ and ‘afraid’ during [a border] interview” did not  
2 undermine the determination that the interview record was reliable).

3         Second, the agency reasonably relied on Wang’s false statement on an  
4 earlier visa application. *See* 8 U.S.C. § 1158(b)(1)(B)(iii). In a 2013 application for  
5 a tourist visa, Wang claimed that he was a “deputy owner” of a “KTV club,” but  
6 the interviewer’s notes indicated that he had been unable to remember the address  
7 of the club. Wang testified that everything in that visa application was true and  
8 accurate; but his asylum application did not reflect that employment. When  
9 confronted, Wang testified that he “wasn’t officially employed for the singing and  
10 dancing venue” but was “doing an internship.” Stating that he was a “deputy  
11 owner” as opposed to an intern shows a willingness to lie to secure immigration  
12 benefits, and whether he was even an intern is called into question by his inability  
13 to give the address when he applied for the visa and the omission of the  
14 employment from his asylum application. *See Likai Gao v. Barr*, 968 F.3d 137, 145  
15 n.8 (2d Cir. 2020) (“[E]ven a single inconsistency might preclude an alien from  
16 showing that an IJ was compelled to find him credible. Multiple inconsistencies  
17 would so preclude even more forcefully.”); *Siewe v. Gonzales*, 480 F.3d 160, 170 (2d  
18 Cir. 2007) (“[A] single false document or a single instance of false testimony may

1 (if attributable to the petitioner) infect the balance of the alien's uncorroborated or  
2 unauthenticated evidence.").

3 Further, as the agency reasoned, Wang's statement was not excusable as one  
4 made to flee persecution. *See Rui Ying Lin v. Gonzales*, 445 F.3d 127, 134 (2d Cir.  
5 2006). Wang testified that he had not lied on the visa application, and he did not  
6 argue or testify before the agency that he applied for it to flee persecution; rather,  
7 he testified that he had applied for the visa to take a trip to the United States, but  
8 intended to return to China.

9 Finally, Wang's failure to reliably corroborate his testimony provides  
10 further support for the adverse credibility determination. *See Biao Yang v.*  
11 *Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007) ("An applicant's failure to corroborate his  
12 or her testimony may bear on credibility, because the absence of corroboration in  
13 general makes an applicant unable to rehabilitate testimony that has already been  
14 called into question."). The BIA did not err in concluding that Wang waived  
15 review of the IJ's corroboration findings because his brief to the BIA addressed the  
16 findings in a single conclusory sentence. *See Yueqing Zhang v. Gonzales*, 426 F.3d  
17 540, 545 n.7 (2d Cir. 2005) (finding abandoned claim raised "in a single conclusory  
18 sentence"). Accordingly, any challenge to the corroboration findings is

1 unexhausted. *See Ud Din v. Garland*, 72 F.4th 411, 419–20 & n.2 (2d Cir. 2023).  
2 Moreover, the agency does not err in declining to give weight to statements from  
3 interested parties or declarants who are unavailable for cross-examination, *see*  
4 *Likai Gao*, 968 F.3d at 149, and much of Wang’s evidence consisted of identity  
5 documents and information about his practice of Christianity in the United States  
6 that did not corroborate his past persecution or resolve the credibility issues, *see*  
7 *Y.C. v. Holder*, 741 F.3d 324, 332 (2d Cir. 2013) (“We generally defer to the agency’s  
8 evaluation of the weight to be afforded an applicant’s documentary evidence.”).

9 In sum, taken together, Wang’s failure to mention during his border  
10 interview the most recent serious incident of alleged persecution, his false  
11 statements in a prior visa application, and the lack of reliable corroboration  
12 provide substantial evidence for the adverse credibility determination. *See Xiu*  
13 *Xia Lin*, 534 F.3d at 167; *Biao Yang*, 496 F.3d at 273. That adverse credibility  
14 determination is dispositive of asylum, withholding of removal, and CAT relief  
15 because all three forms of relief were based on the same facts. *Hong Fei Gao*, 891  
16 F.3d at 76. Contrary to Wang’s contention here, his lack of credibility is  
17 dispositive of his claim of future religious persecution, because it undercuts his  
18 claim that he is in fact a practicing Christian who would again attend church in



1 China and thereby be subject to persecution. *See id.*; *Paul v. Gonzales*, 444 F.3d 148,  
2 156–67 (2d Cir. 2018).

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

5 FOR THE COURT:  
6 Catherine O’Hagan Wolfe,  
7 Clerk of Court