

**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 29th day of April, two thousand twenty-five.

PRESENT:

RICHARD C. WESLEY,
RAYMOND J. LOHIER, JR.,
BETH ROBINSON,
Circuit Judges.

MILTON DANIEL HERNANDEZ-
HERNANDEZ, LIGIA MARIELA
MOPOSITA-YANCHATUNA, S.D. H-M,
Petitioners,

v.

PAMELA BONDI, UNITED STATES
ATTORNEY GENERAL,

23-7314
NAC

*Respondent.**

FOR PETITIONERS:

Michael Borja, Borja Law Firm, P.C., Jackson Heights, NY.

FOR RESPONDENT:

Brian M. Boynton, Principal Deputy Assistant Attorney General; Cindy S. Ferrier, Assistant Director; Andrew N. O'Malley, Senior Litigation Counsel, 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.

Milton Daniel Hernandez-Hernandez, his wife, Ligia Mariela Moposita-Yanchatuna, and their minor son, natives and citizens of Ecuador, seek review of a September 14, 2023 decision of the BIA affirming an April 21, 2022 decision of an Immigration Judge (“IJ”) denying their applications for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). *In re Milton Daniel Hernandez-Hernandez, et al.*, Nos. A220 290 169/170/171 (B.I.A. Sept. 14, 2023),

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Pamela Bondi is automatically substituted for former Attorney General Merrick B. Garland as Respondent. Because petitioner S.D. H-M is a minor, the Clerk of Court is directed to amend the caption as set forth above.

1 *aff'g* Nos. A220 290 169/170/171 (Immig. Ct. N.Y. City Apr. 21, 2022). We assume
2 the parties' familiarity with the underlying facts and procedural history.

3 We review the IJ's decision as modified by the BIA. *See Xue Hong Yang v.*
4 *U.S. Dep't of Just.*, 426 F.3d 520, 522 (2d Cir. 2005). We review an adverse
5 credibility determination "under the substantial evidence standard," *Hong Fei Gao*
6 *v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018), and "the administrative findings of fact
7 are conclusive unless any reasonable adjudicator would be compelled to conclude
8 to the contrary," 8 U.S.C. § 1252(b)(4)(B).

9 **I. Adverse Credibility Determination**

10 "Considering the totality of the circumstances, and all relevant factors, a
11 trier of fact may base a credibility determination on . . . the consistency between
12 the applicant's or witness's written and oral statements (whenever made and
13 whether or not under oath, and considering the circumstances under which the
14 statements were made), the internal consistency of each such statement, [and] the
15 consistency of such statements with other evidence of record . . . without regard to
16 whether an inconsistency, inaccuracy, or falsehood goes to the heart of the
17 applicant's claim, or any other relevant factor." *Id.* § 1158(b)(1)(B)(iii). "We
18 defer . . . to an IJ's credibility determination unless, from the totality of the

1 circumstances, it is plain that no reasonable fact-finder could make such an
2 adverse credibility ruling.” *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir.
3 2008); *accord Hong Fei Gao*, 891 F.3d at 76–77. Substantial evidence supports the
4 agency’s adverse credibility determination.

5 First, the agency reasonably relied on Hernandez-Hernandez’s omission of
6 material information from his amended statement and initial testimony. *See*
7 8 U.S.C. § 1158(b)(1)(B)(iii) (allowing reliance on “any other relevant factor”). We
8 have cautioned that “in general omissions are less probative of credibility than
9 inconsistencies created by direct contradictions in evidence and testimony.”
10 *Hong Fei Gao*, 891 F.3d at 78 (quotation marks omitted). But “the probative value
11 of a witness’s prior silence on particular facts depends on whether those facts are
12 ones the witness would reasonably have been expected to disclose.” *Id.*
13 Hernandez-Hernandez attached a two-page written statement, in which he
14 discussed incidents in which he was bullied in elementary school because of his
15 indigenous ethnicity, and in which he identified an assault, property damage, an
16 attempted kidnapping of his son, and threats when he was an adult in 2020 and
17 2021. But his written statement did not describe the incidents as an adult being
18 related to his ethnicity, and he testified that he did not know the reason for those

1 attacks. He did not link the attacks to being indigenous until questioned by the
2 IJ at the end of the hearing.

3 The agency did not err in finding this omission material, given the nexus
4 required for asylum. *See id.* at 78–79; *see also* 8 U.S.C. § 1158(b)(1)(B)(i) (placing
5 burden on applicant “to establish that . . . race, religion, nationality, membership
6 in a particular social group, or political opinion was or will be at least one central
7 reason for persecuting the applicant”); *cf. Singh v. Garland*, 6 F.4th 418, 431 (2d Cir.
8 2021) (“The more serious the inconsistency—*i.e.*, the greater the importance of the
9 fact upon which inconsistency is found for the success of the petition and the more
10 likely it is that a truthful account would not have included the inconsistency—the
11 more substantial that evidence is in casting doubt on the petitioner’s credibility.”).

12 And Hernandez-Hernandez did not compellingly explain the omission
13 when asked about the motive for the attack at the hearing. *See Majidi v. Gonzales*,
14 430 F.3d 77, 80 (2d Cir. 2005) (“A petitioner must do more than offer a plausible
15 explanation for his inconsistent statements to secure relief; he must demonstrate
16 that a reasonable fact-finder would be *compelled* to credit his testimony.”
17 (quotation marks omitted) (emphasis in original)).

18 Because the agency concluded based on substantial evidence that the above

1 omission called Hernandez-Hernandez's credibility into question, the agency did
2 not err in considering the absence of corroboration of motive in the form of
3 documentary evidence or testimony from his wife. *See Biao Yang v. Gonzales*, 496
4 F.3d 268, 273 (2d Cir. 2007) ("An applicant's failure to corroborate his or her
5 testimony may bear on credibility, because the absence of corroboration in general
6 makes an applicant unable to rehabilitate testimony that has already been called
7 into question.").

8 Second, the agency reasonably relied on an inconsistency between
9 Hernandez-Hernandez's testimony and amended statement. *See* 8 U.S.C.
10 § 1158(b)(1)(B)(iii). Hernandez-Hernandez testified that one year after the
11 December 2020 assault, the same men threw a rock through his window with a
12 written death threat, broke into his home, and tried to kidnap his son. In contrast,
13 he wrote in his amended statement that the rock was thrown through the window
14 in April 2021. The IJ was not required to accept his explanation that he was
15 confused by stressful events and unable to recall details given that he knew the
16 dates when drafting and amending his written statement. *See Majidi*, 430 F.3d at
17 80. Moreover, he offered no corroboration of the events, of any medical care he
18 received, or to confirm that he had suffered head trauma and had continuing

1 memory issues. *See Biao Yang*, 496 F.3d at 273.

2 Taken together, the omission, inconsistency, and lack of reliable
3 corroboration provide substantial evidence for the agency's adverse credibility
4 determination. *See Likai Gao v. Barr*, 968 F.3d 137, 145 n.8 (2d Cir. 2020) ("[E]ven
5 a single inconsistency might preclude an [individual] from showing that an IJ was
6 compelled to find him credible. Multiple inconsistencies would so preclude even
7 more forcefully."); *Xiu Xia Lin*, 534 F.3d at 167; *Biao Yang*, 496 F.3d at 273. Because
8 Hernandez-Hernandez's claims for asylum and withholding of removal rest on
9 the same factual predicate, the adverse credibility determination was dispositive
10 of those forms of relief, and the agency was not required to perform a separate
11 analysis for withholding of removal. *See Hong Fei Gao*, 891 F.3d at 76.

12 II. CAT Relief

13 To succeed on a CAT claim, an applicant must show that he would "more
14 likely than not" be tortured by or with the acquiescence of a government
15 official. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). In assessing the likelihood of
16 torture, "all evidence relevant to the possibility of future torture shall be
17 considered, including, but not limited to . . . [e]vidence that the applicant could
18 relocate to a part of the country of removal where he or she is not likely to be

1 tortured.” *Id.* § 1208.16(c)(3)(ii). An applicant’s “ability to relocate internally
2 means that he cannot establish a likelihood of torture.” *Singh v. Garland*, 11 F.4th
3 106, 118 (2d Cir. 2021).

4 The BIA denied CAT relief because, among other reasons, Hernandez-
5 Hernandez did not challenge the IJ’s finding that he did not meet his burden to
6 establish that he could not relocate. Hernandez-Hernandez has abandoned
7 review of that dispositive finding by not challenging it here. *See Debique v.*
8 *Garland*, 58 F.4th 676, 684 (2d Cir. 2023) (“We consider abandoned any claims not
9 adequately presented in an appellant’s brief, and an appellant’s failure to make
10 legal or factual arguments constitutes abandonment.” (quotation marks omitted)).
11 Because Hernandez-Hernandez has not challenged the finding that he can avoid
12 the danger he fears by relocating within Ecuador, we cannot grant relief on his
13 CAT claim.

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

16 FOR THE COURT:
17 Catherine O’Hagan Wolfe,
18 Clerk of Court