

**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 3<sup>rd</sup> day of February, two thousand twenty-five.

**PRESENT:**

DENNY CHIN,  
RICHARD J. SULLIVAN,  
ALISON J. NATHAN,  
*Circuit Judges.*

AAYUJ BUDHA,  
*Petitioner,*

**v.**

JAMES R. MCGENRY III, ACTING  
UNITED STATES ATTORNEY  
GENERAL,  
*Respondent.*

**23-6351  
NAC**

1   **FOR PETITIONER:**                   Dilli Raj Bhatta, Bhatta Law & Associates,  
2   New York, NY.

3  
4   **FOR RESPONDENT:**               Brian M. Boynton, Principal Deputy Assistant  
5   Attorney General; Bernard A. Joseph, Senior  
6   Litigation Counsel; Roberta O. Roberts, Trial  
7   Attorney, Office of Immigration Litigation,  
8   United States Department of Justice,  
9   Washington, DC.

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

13           Petitioner Aayuj Budha, a native and citizen of Nepal, seeks review of a  
14   March 29, 2023, decision of the BIA affirming a June 25, 2019, decision of an  
15   Immigration Judge (“IJ”) denying his application for asylum, withholding of  
16   removal, and relief under the Convention Against Torture (“CAT”). *In re Aayuj*  
17   *Budha*, No. A216 433 598 (B.I.A. Mar. 29, 2023), *aff’g* No. A216 433 598 (Immigr. Ct.  
18   N.Y.C. June 25, 2019). We assume the parties’ familiarity with the underlying  
19   facts and procedural history.

20           We review the IJ’s decision as modified by the BIA and consider only the  
21   grounds that the BIA relied on. *See Xue Hong Yang v. U.S. Dep’t of Just.*, 426 F.3d  
22   520, 522 (2d Cir. 2005). “We review the agency’s factual findings, including  
23   adverse credibility findings, under the substantial evidence standard,” *Hong Fei*

1 *Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018), and “the administrative findings of  
2 fact are conclusive unless any reasonable adjudicator would be compelled to  
3 conclude to the contrary,” 8 U.S.C. § 1252(b)(4)(B).

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

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

18 Budha alleged that members of the Communist Party of Nepal (Maoist  
19 Centre) assaulted and threatened him for being a member of the Nepali Congress

1 Party. Substantial evidence supports the agency's adverse credibility  
2 determination.

3 The agency reasonably relied on inconsistencies in Budha's descriptions of  
4 his interactions with the police following his second attack. *See* 8 U.S.C.  
5 § 1158(b)(1)(B)(iii). In his application, Budha alleged that the police came to the  
6 hospital after the second attack and told him that "the incident seemed to be  
7 political in nature" but they would "try to find the perpetrator"; when he went to  
8 the station the next day, the police told him they do not "usually handle political  
9 cases" but "will see what they can do." Certified Admin. Rec. ("CAR") at 233.

10 His testimony at the hearing differed: he said that when he went to the police  
11 station, the police told him that it was a political matter and "they don't really look  
12 into it." *Id.* at 116. His subsequent testimony added more inconsistency because  
13 he stated that the police said "they cannot investigate," *id.* at 133, and he  
14 confirmed, contrary to his application, that the police never said they would try to  
15 find his attackers, *see id.* at 134–35, 137. The agency was not required to accept  
16 Budha's explanation that the police gave him a false assurance because it did not  
17 resolve his inconsistent statements about what the police told him. *See Majidi v.*  
18 *Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005) ("A petitioner must do more than offer a  
19 plausible explanation for his inconsistent statements to secure relief; he must

1 demonstrate that a reasonable fact-finder would be *compelled* to credit his  
2 testimony.” (quotation marks omitted)).

3       The agency also reasonably relied on Budha’s demeanor and responsiveness  
4 during his hearing. *See* 8 U.S.C. § 1158(b)(1)(B)(iii). On multiple occasions  
5 during cross-examination and questioning by the IJ, Budha did not directly answer  
6 the questions asked, and questions either had to be asked multiple times or Budha  
7 had to be asked to respond with only “yes” or “no” because of his evasive or  
8 elaborative answers. We defer to the trier of fact’s assessment of demeanor. *Jin*  
9 *Chen v. U.S. Dep’t of Just.*, 426 F.3d 104, 113 (2d Cir. 2005) (“We give particular  
10 deference to credibility determinations that are based on the adjudicator’s  
11 observation of the applicant’s demeanor, in recognition of the fact that the IJ’s  
12 ability to observe the witness’s demeanor places her in the best position to evaluate  
13 whether apparent problems in the witness’s testimony suggest a lack of credibility  
14 or, rather, can be attributed to an innocent cause such as difficulty understanding  
15 the question.”).

16       The agency further reasonably relied on Budha’s failure to rehabilitate his  
17 testimony with reliable corroborating evidence. “An applicant’s failure to  
18 corroborate his or her testimony may bear on credibility, because the absence of  
19 corroboration in general makes an applicant unable to rehabilitate testimony that

1 has already been called into question.” *Biao Yang v. Gonzales*, 496 F.3d 268, 273  
2 (2d Cir. 2007). As the IJ noted, the letters from Budha’s father and his neighbors  
3 included detailed accounts of events that they did not personally witness, while  
4 giving vague accounts of what they allegedly did witness, and thus did not  
5 reliably corroborate his claims. *See Y.C. v. Holder*, 741 F.3d 324, 334 (2d Cir. 2013)  
6 (“We defer to the agency’s determination of the weight afforded to an alien’s  
7 documentary evidence.”). Furthermore, the agency reasonably accorded the  
8 letters little weight because none of the declarants were available for cross-  
9 examination. *See Likai Gao v. Barr*, 968 F.3d 137, 149 (2d Cir. 2020) (“[T]he IJ acted  
10 within her discretion in according [the letters] little weight because the declarants  
11 (particularly [the petitioner’s] wife) were interested parties and neither was  
12 available for cross-examination.”).

13 Taken together, Budha’s inconsistency about what the police told him, his  
14 lack of responsiveness to cross-examination and questions from the IJ, and his lack  
15 of objective, reliable corroboration provide substantial evidence for the adverse  
16 credibility determination. *See* 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia Lin*, 534 F.3d at  
17 167; *Biao Yang*, 496 F.3d at 273; *see also Likai Gao*, 968 F.3d at 145 n.8 (“[E]ven a single  
18 inconsistency might preclude an alien from showing that an IJ was compelled to  
19 find him credible. Multiple inconsistencies would so preclude even more

1 forcefully.”). The adverse credibility determination is dispositive of Budha’s  
2 claims for asylum, withholding of removal, and CAT relief because all three claims  
3 are based on the same factual predicate. *See Hong Fei Gao*, 891 F.3d at 76 (“Where  
4 the same factual predicate underlies a petitioner’s claims for asylum, withholding  
5 of removal, and protection under the CAT, an adverse credibility determination  
6 forecloses all three forms of relief.”).

7 Budha also makes a due process argument based on the IJ’s alleged hostility  
8 toward him. As discussed above, there were several instances where the IJ had  
9 to repeat questions or ask Budha to answer a question directly. “To establish a  
10 violation of due process, an alien must show that [h]e was denied a full and fair  
11 opportunity to present h[is] claims or that the IJ or BIA otherwise deprived h[im]  
12 of fundamental fairness.” *Burger v. Gonzales*, 498 F.3d 131, 134 (2d Cir. 2007)  
13 (quotation marks omitted). And “[p]arties claiming denial of due process in  
14 immigration cases must, in order to prevail, allege some cognizable prejudice  
15 fairly attributable to the challenged process.” *Garcia-Villeda v. Mukasey*, 531 F.3d  
16 141, 149 (2d Cir. 2008) (quotation marks omitted). Budha has not alleged that he  
17 was prevented from presenting evidence nor has he explained how he was  
18 prejudiced by the IJ’s repetition of questions.

