

**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 8<sup>th</sup> day of January, two thousand twenty-five.

**PRESENT:**

SUSAN L. CARNEY,  
RICHARD J. SULLIVAN,  
MYRNA PÉREZ,  
*Circuit Judges.*

ARIF HOSSAIN,  
*Petitioner,*

v.

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

22-6298  
NAC

**FOR PETITIONER:** Khagendra Gharti-Chhetry, New York, NY.

1 **FOR RESPONDENT:**

Brian M. Boynton, Principal Deputy Assistant  
Attorney General; Kohsei Ugumori, Senior  
Litigation Counsel; Krishana N. Patel, Trial  
Attorney, Office of Immigration Litigation,  
United States Department of Justice,  
Washington, DC.

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

10 Petitioner Arif Hossain, a native and citizen of Bangladesh, seeks review of  
11 a May 25, 2022 decision of the BIA affirming a November 27, 2018 decision of an  
12 Immigration Judge (“IJ”) denying his application for asylum, withholding of  
13 removal, and relief under the Convention Against Torture (“CAT”). *In re Arif*  
14 *Hossain*, No. A206 250 253 (B.I.A. May 25, 2022), *aff’g* No. A206 250 253 (Immigr.  
15 Ct. N.Y.C. Nov. 27, 2018). We assume the parties’ familiarity with the underlying  
16 facts and procedural history.

17 We review the IJ’s decision as supplemented by the BIA. *See Yan Chen v.*  
18 *Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We address only the adverse credibility  
19 determination because Hossain has failed to exhaust some issues he raises here.  
20 On appeal to the BIA, he did not challenge the reliability of the record of the  
21 credible fear interview, argue that there was objective evidence sufficient to

1 demonstrate a well-founded fear of persecution even absent credible testimony, or  
2 raise his CAT claim. Thus, the BIA did not err in finding the issues forfeited, and  
3 the issues are unexhausted and not properly before us. *See Ud Din v. Garland*, 72  
4 F.4th 411, 419–20 & n.2 (2d Cir. 2023) (re-confirming that issue exhaustion is  
5 mandatory).

6 We review adverse credibility determinations “under the substantial  
7 evidence standard.” *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018).  
8 “[T]he administrative findings of fact are conclusive unless any reasonable  
9 adjudicator would be compelled to conclude to the contrary.” 8 U.S.C.  
10 § 1252(b)(4)(B). The credibility determination provision of the asylum statute  
11 reads:

12 Considering the totality of the circumstances, and all relevant factors,  
13 a trier of fact may base a credibility determination on . . . the  
14 consistency between the applicant’s or witness’s written and oral  
15 statements (whenever made and whether or not under oath, and  
16 considering the circumstances under which the statements were  
17 made), the internal consistency of each such statement, [and] the  
18 consistency of such statements with other evidence of  
19 record . . . without regard to whether an inconsistency, inaccuracy, or  
20 falsehood goes to the heart of the applicant’s claim, or any other  
21 relevant factor.

22 *Id.* § 1158(b)(1)(B)(iii).

1            “We defer . . . to an IJ’s credibility determination unless, from the totality of  
2    the circumstances, it is plain that no reasonable fact-finder could make such an  
3    adverse credibility ruling.” *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir.  
4    2008); accord *Hong Fei Gao*, 891 F.3d at 76. Substantial evidence supports the  
5    agency’s determination that Hossain was not credible as to his claim that he was  
6    assaulted on multiple occasions by members of an opposing political party.

7            The agency reasonably relied on inconsistencies between Hossain’s credible  
8    fear interview, application, and testimony regarding the number of times he was  
9    attacked. See 8 U.S.C. § 1158(b)(1)(B)(iii). At the interview conducted  
10   approximately two months after Hossain entered the United States, he was asked  
11   how many times he was harmed; in response, he indicated “[t]wo times,” then said  
12   the first time was May 5, 2013, and the second time was May 15, 2013. Certified  
13   Admin. Rec. at 766. But he identified two additional attacks in his application—  
14   one in July 2011, and another in February 2012, in which Awami League members  
15   cut him with a knife. And he testified to an additional 2009 incident, in which  
16   Awami League members threatened to kill him if he did not stop putting up  
17   posters.

1           When confronted with these inconsistencies, Hossain explained that he was  
2 nervous during his credible fear interview and focused on the most recent events  
3 that made him leave Bangladesh. However, “an alien’s mere recitation that he  
4 was nervous . . . will not automatically prevent the IJ or BIA from relying [o]n  
5 statements . . . when making adverse credibility determination.” *Yun-Zui Guan*  
6 *v. Gonzales*, 432 F.3d 391, 397 n.6 (2d Cir. 2005). Nor was the IJ compelled to credit  
7 Hossain’s explanation that he only spoke about the events that caused him to leave  
8 Bangladesh because he was asked how many times he was attacked. The record  
9 reflects that Hossain was repeatedly asked if he wanted to add more information  
10 about his claim; given this questioning, it makes little sense that he would fail to  
11 mention the most severe attack in 2012. *See Majidi v. Gonzales*, 430 F.3d 77, 80 (2d  
12 Cir. 2005) (“A petitioner must do more than offer a plausible explanation for his  
13 inconsistent statements to secure relief; he must demonstrate that a reasonable  
14 fact-finder would be *compelled* to credit his testimony.” (quotation marks  
15 omitted)); *see also Cheng Tong Wang v. Gonzales*, 449 F.3d 451, 453 (2d Cir. 2006)  
16 (“[O]missions that go to a heart of an applicant’s claim can form the basis for an  
17 adverse credibility determination.”). While Hossain was “not required to give a  
18 detailed and specific account of the bases for [his] claims” in his credible fear

1 interview, *Ming Zhang v. Holder*, 585 F.3d 715, 724 (2d Cir. 2009) (quotation marks  
2 omitted), the first two times he was attacked are the kind of facts “that a credible  
3 petitioner would reasonably have been expected to disclose under the relevant  
4 circumstances,” *Hong Fei Gao*, 891 F.3d at 78–79, and Hossain confirmed he had  
5 understood the purpose of the credible fear interview was to provide *all* the  
6 reasons he feared returning to Bangladesh.

7       The inconsistencies, which call into question the alleged assaults that were  
8 the basis of the claim, provide substantial evidence for the agency’s credibility  
9 determination. *See Singh v. Garland*, 6 F.4th 418, 431 (2d Cir. 2021) (“The more  
10 serious the inconsistency—*i.e.*, the greater the importance of the fact upon which  
11 inconsistency is found for the success of the petition and the more likely it is that  
12 a truthful account would not have included the inconsistency—the more  
13 substantial that evidence is in casting doubt on the petitioner’s credibility.”); *Likai*  
14 *Gao v. Barr*, 968 F.3d 137, 145 n.8 (2d Cir. 2020) (“[E]ven a single inconsistency  
15 might preclude an alien from showing that an IJ was compelled to find him  
16 credible.”); *Xiu Xia Lin*, 534 F.3d at 166 (“Where the IJ’s adverse credibility finding  
17 is based on specific examples . . . of inconsistent statements or contradictory  
18 evidence, a reviewing court will generally not be able to conclude that a reasonable

1 adjudicator was compelled to find otherwise.” (quotation marks omitted)). The  
2 adverse credibility determination is dispositive of asylum and withholding of  
3 removal because both forms of relief are based on the same factual predicate. *See*  
4 *Hong Fei Gao*, 891 F.3d at 76.

5 For the foregoing reasons, the petition for review is DENIED.

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