

**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 16th day of December, two thousand twenty-four.

PRESENT:

DEBRA ANN LIVINGSTON,
Chief Judge,
BETH ROBINSON,
SARAH A. L. MERRIAM,
Circuit Judges.

NAVJOT SINGH,
Petitioner,

v.

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

22-6425
NAC

FOR PETITIONER:

Jana Junuz, Law Office of Jana Junuz, PC,
S. Richmond Hill, NY.

1 **FOR RESPONDENT:**

Brian Boynton, Principal Deputy Assistant
Attorney General; Brianne Whelan Cohen,
Senior Litigation Counsel; Rebecca Hoffberg
Phillips, Trial Attorney, Office of Immigration
Litigation, United States Department of
Justice, Washington, DC.

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

11 Petitioner Navjot Singh, a native and citizen of India, seeks review of an
12 August 12, 2022, decision of the BIA affirming a June 26, 2019, decision of an
13 Immigration Judge (“IJ”) denying his application for asylum, withholding of
14 removal, and relief under the Convention Against Torture (“CAT”). *In re Navjot*
15 *Singh*, No. A216 174 120 (B.I.A. Aug. 12, 2022), *aff’g* No. A216 174 120 (Immig. Ct.
16 N.Y. City June 26, 2019). We assume the parties’ familiarity with the underlying
17 facts and procedural history.

18 Under the circumstances, we have reviewed the IJ’s decision as modified by
19 the BIA, i.e., minus the IJ’s burden findings that the BIA did not reach. *See Xue*
20 *Hong Yang v. U.S. Dep’t of Just.*, 426 F.3d 520, 522 (2d Cir. 2005). We review an
21 adverse credibility determination “under the substantial evidence standard,”
22 *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018), and “the administrative

1 findings of fact are conclusive unless any reasonable adjudicator would be
2 compelled to conclude to the contrary,” 8 U.S.C. § 1252(b)(4)(B).

3 “Considering the totality of the circumstances, and all relevant factors, a
4 trier of fact may base a credibility determination on . . . the consistency between
5 the applicant’s or witness’s written and oral statements (whenever made and
6 whether or not under oath, and considering the circumstances under which the
7 statements were made), the internal consistency of each such statement, [and] the
8 consistency of such statements with other evidence of record . . . without regard to
9 whether an inconsistency, inaccuracy, or falsehood goes to the heart of the
10 applicant’s claim, or any other relevant factor.” *Id.* § 1158(b)(1)(B)(iii). “We
11 defer . . . to an IJ’s credibility determination unless, from the totality of the
12 circumstances, it is plain that no reasonable fact-finder could make such an
13 adverse credibility ruling.” *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir.
14 2008); *accord Hong Fei Gao*, 891 F.3d at 76.

15 Singh alleged that Bharatiya Janata Party (“BJP”) and Congress Party
16 members threatened and beat him in India on account of his support for the
17 Shiromani Akali Dal Amritsar Party, which is also known as the Mann Party.
18 Substantial evidence supports the agency’s determination that Singh was not
19 credible.

1 First, the agency reasonably relied on an inconsistency between Singh's
2 testimony and his sister's affidavit regarding whether he reported one of his
3 alleged assaults to police. See 8 U.S.C. § 1158(b)(1)(B)(iii).

4 Second, the agency also reasonably relied on the omission from Singh's, his
5 mother's, and his sister's written statements of his claim that Congress Party
6 members threatened his family after he left India. Singh testified that on two
7 occasions, BJP and Congress Party members had gone to his family's home: "They
8 asked about me and they threatened my family members that you cannot hide him
9 for long time." Certified Administrative Record ("CAR") at 159 [sic]. Three
10 other statements by non-family members submitted on Singh's behalf also
11 reported threats to his family. See CAR at 272, 297, 300. But Singh and the two
12 people alleged to be *directly involved*, his mother and sister, did not mention the
13 threats in their written statements. Although "omissions are less probative of
14 credibility than inconsistencies," the agency reasonably relied on these omissions
15 because Singh, his mother, and his sister all asserted in their written statements
16 that Singh would likely be killed if he returns to India and thus "would reasonably
17 have been expected to disclose" that Congress Party members had continued to
18 look for and threaten Singh as support for that otherwise unsupported assertion.
19 *Hong Fei Gao*, 891 F.3d at 78–79 (citation omitted).

1 Finally, the agency reasonably relied on Singh's omission from his initial
2 asylum application of his assertion that Congress Party members threatened and
3 attacked his father in India and later killed his father in Dubai on account of his
4 father's support for the Mann Party. This assertion was important because his
5 father's alleged experience mirrors Singh's claim of past harm and future fears,
6 and its omission was surprising, given that Singh attached a written statement to
7 his asylum application that included details that were less relevant to the
8 application. *See* 8 U.S.C. § 1158(b)(1)(B)(iii); *see also Hong Fei Gao*, 891 F.3d at 78.

9 Despite numerous opportunities to explain these inconsistencies and
10 omissions, Singh did not compellingly do so. *See Majidi v. Gonzales*, 430 F.3d 77,
11 80 (2d Cir. 2005) ("A petitioner must do more than offer a plausible explanation
12 for his inconsistent statements to secure relief; he must demonstrate that a
13 reasonable fact-finder would be *compelled* to credit his testimony." (quotation
14 marks omitted)).

15 Having questioned Singh's credibility, the agency reasonably relied further
16 on his failure to rehabilitate his testimony with reliable corroborating evidence.
17 "An applicant's failure to corroborate his or her testimony may bear on credibility,
18 because the absence of corroboration in general makes an applicant unable to
19 rehabilitate testimony that has already been called into question." *Biao Yang v.*

1 *Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007). The agency did not err in declining to
2 credit Singh's mother's and sister's affidavits because, in addition to the
3 inconsistencies and omissions noted above, his mother and sister were interested
4 parties who were not available for cross-examination. *See Likai Gao v. Barr*, 968
5 F.3d 137, 149 (2d Cir. 2020) (holding that "the IJ acted within her discretion in
6 according [letters] little weight because the declarants (particularly [petitioner]'s
7 wife) were interested parties and neither was available for cross-examination");
8 *Y.C. v. Holder*, 741 F.3d 324, 334 (2d Cir. 2013) ("We defer to the agency's
9 determination of the weight afforded to an [applicant's] documentary evidence.");
10 Singh failed to submit medical evidence of his alleged overnight hospitalization
11 resulting from an assault, and a letter from his political party asserted that BJP and
12 Congress Party workers were still "searching for" Singh as of February 2019,
13 which was inconsistent with Singh's testimony that they had not looked for him
14 since February 2018.

15 The inconsistencies and lack of reliable corroboration constitute substantial
16 evidence for the agency's adverse credibility determination. *See* 8 U.S.C.
17 § 1158(b)(1)(B)(iii); *Likai Gao*, 968 F.3d at 145 n.8 ("[E]ven a single inconsistency
18 might preclude an [applicant] from showing that an IJ was compelled to find him
19 credible. Multiple inconsistencies would so preclude even more forcefully.");

