

**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 28th day of August, two thousand twenty-four.

PRESENT:

DEBRA ANN LIVINGSTON,
Chief Judge,
DENNIS JACOBS,
WILLIAM J. NARDINI,
Circuit Judges.

JINGDONG LIU,
Petitioner,

v.

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

22-6386
NAC

1 **FOR PETITIONER:**

Aleksander Boleslaw Milch, Esq., The Kasen
Law Firm, PLLC, Flushing, NY.

4 **FOR RESPONDENT:**

Brian Boynton, Principal Deputy Assistant
Attorney General; Leslie McKay, Senior
Litigation Counsel; Scott M. Marconda, Senior
Trial Attorney, Office of Immigration
Litigation, United States Department of
Justice, 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 Jingdong Liu, a native and citizen of the People’s Republic of
14 China, seeks review of a July 15, 2022, decision of the BIA affirming a May 28, 2019,
15 decision of an Immigration Judge (“IJ”) denying his application for asylum,
16 withholding of removal, and relief under the Convention Against Torture
17 (“CAT”). *In re Jingdong Liu*, No. A 205 042 780 (B.I.A. July 15, 2022), *aff’g* No. A
18 205 042 780 (Immig. Ct. N.Y. City May 28, 2019). We assume the parties’
19 familiarity with the underlying facts and procedural history.

20 We have reviewed both the IJ’s and BIA’s decisions. *Wangchuck v. DHS*,
21 448 F.3d 524, 528 (2d Cir. 2006). We review an adverse credibility determination
22 “under the substantial evidence standard,” *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76

1 (2d Cir. 2018), and “the administrative findings of fact are conclusive unless any
2 reasonable adjudicator would be compelled to conclude to the contrary,” 8 U.S.C.
3 § 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 consistency between the
7 applicant’s or witness’s written and oral statements (whenever made and whether
8 or not under oath, and considering the circumstances under which the statements
9 were made), the internal consistency of each such statement, the consistency of
10 such statements with other evidence of record . . . , and any inaccuracies or
11 falsehoods in such statements, without regard to whether an inconsistency,
12 inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other
13 relevant factor. *Id.* § 1158(b)(1)(B)(iii). “We defer . . . to an IJ’s credibility
14 determination unless, from the totality of the circumstances, it is plain that no
15 reasonable fact-finder could make such an adverse credibility ruling.” *Xiu Xia*
16 *Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008); *accord Hong Fei Gao*, 891 F.3d at 76.

17 Liu alleged that he was detained and abused in China in 1995 and that he
18 feared persecution because he joined the China Democracy Party (“CDP”) in the

1 United States in 2011 and had attended protests in the United States against the
2 Chinese government. Substantial evidence supports the agency's adverse
3 credibility determination.

4 First, the agency reasonably concluded that Liu made a false statement at
5 his hearing given an inconsistency between his testimony and his post-hearing
6 declaration regarding whether he went into the Chinese consulate in 2017 to obtain
7 his passport. *See* 8 U.S.C. § 1158(b)(1)(B)(iii). Liu testified he hired a service to
8 renew his passport in 2017, and did not go into the Chinese consulate personally.
9 He confirmed this multiple times, ultimately stating that after becoming involved
10 with the CDP, he protested outside the Chinese consulate but never went inside.
11 However, following his hearing, Liu submitted a sworn statement that he "did not
12 fully understand the judge's question and made an inappropriate answer,"
13 explaining that he went to the consulate to be fingerprinted in 2017, but did not
14 personally pick up his passport when it was ready. The IJ was not compelled to
15 accept this explanation given Liu's contrary statements at the hearing. Further,
16 Liu's declaration does not explain why he testified that the passport process no
17 longer required going in person. *See Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir.
18 2005) ("A petitioner must do more than offer a plausible explanation for his

1 inconsistent statements to secure relief; he must demonstrate that a reasonable
2 fact-finder would be *compelled* to credit his testimony.” (quotation marks
3 omitted)). As the IJ noted, Liu may have denied going to the consulate because
4 he believed an admission that he had would be viewed as undermining his fear of
5 Chinese authorities. Accordingly, the IJ did not err in concluding that the
6 statement wholly undermined Liu’s credibility. *See Siewe v. Gonzales*, 480 F.3d
7 160, 170–71 (2d Cir. 2007) (explaining that even “[f]alse evidence that is wholly
8 ancillary” may be sufficient under some circumstances to trigger the doctrine of
9 “*falsus in uno, falsus in omnibus*” such that “a single false document or a single
10 instance of false testimony may . . . infect the balance of the alien’s uncorroborated
11 or unauthenticated evidence”).

12 Finally, Liu does not challenge the BIA’s finding that he waived any
13 challenge to the IJ’s finding that he failed to corroborate his claim. *See Debique v.*
14 *Garland*, 58 F.4th 676, 684 (2d Cir. 2023) (“We consider abandoned any claims not
15 adequately presented in an appellant’s brief, and an appellant’s failure to make
16 legal or factual arguments constitutes abandonment.” (quotation marks omitted)).
17 And the agency did not err in relying on a lack of corroboration where, as here,
18 credibility was already in question. *See Biao Yang v. Gonzales*, 496 F.3d 268, 273

1 (2d Cir. 2007) (“An applicant’s failure to corroborate his or her testimony may bear
2 on credibility, because the absence of corroboration in general makes an applicant
3 unable to rehabilitate testimony that has already been called into question.”).
4 Contrary to Liu’s argument, the adverse credibility determination was dispositive
5 because his claims for asylum, withholding of removal, and CAT relief are all
6 based on the same facts. *See Hong Fei Gao*, 891 F.3d at 76.

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

9 FOR THE COURT:
10 Catherine O’Hagan Wolfe,
11 Clerk of Court