

**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 27th day of August, two thousand twenty-four.

PRESENT:

REENA RAGGI,
SUSAN L. CARNEY,
EUNICE C. LEE,
Circuit Judges.

MILOVAN DJERASIMOVIC,
Petitioner,

v.

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

21-6387
NAC

FOR PETITIONER:

Robert Garson, Garson, Segal, Steinmetz,
Fladgate, LLP, New York, NY.

1 **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.

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 Milovan Djerasic, a native and citizen of Serbia and
11 Montenegro, seeks review of a June 9, 2021 decision of the BIA affirming an April
12 11, 2019 decision of an Immigration Judge (“IJ”) denying his application for
13 asylum, withholding of removal, and relief under the Convention Against Torture
14 (“CAT”). *In re Milovan Djerasic*, No. A 201 217 040 (B.I.A. June 9, 2021), *aff’d*
15 No. A 201 217 040 (Immigr. Ct. Buffalo Apr. 11, 2019). We assume the parties’
16 familiarity with the underlying facts and procedural history.

17 Under the circumstances, we have reviewed both the IJ’s and the BIA’s
18 opinions “for the sake of completeness.” *Wangchuck v. Dep’t of Homeland Sec.*, 448
19 F.3d 524, 528 (2d Cir. 2006). Because Djerasic does not challenge the
20 agency’s denial of his asylum claim as time-barred, we consider only his request
21 for withholding of removal and CAT relief. *See Debique v. Garland*, 58 F.4th 676,
22 684 (2d Cir. 2023) (“We consider abandoned any claims not adequately presented

1 in an appellant's brief, and an appellant's failure to make legal or factual
2 arguments constitutes abandonment." (internal quotation marks omitted)). We
3 review adverse credibility determinations "under the substantial evidence
4 standard," *Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018), and "the
5 administrative findings of fact are conclusive unless any reasonable adjudicator
6 would be compelled to conclude to the contrary," 8 U.S.C. § 1252(b)(4)(B).
7 "Considering the totality of the circumstances, and all relevant factors, a trier of
8 fact may base a credibility determination on the demeanor, candor, or
9 responsiveness of the applicant or witness, the inherent plausibility of the
10 applicant's or witness's account, the consistency between the applicant's or
11 witness's written and oral statements . . . , the internal consistency of each such
12 statement, the consistency of such statements with other evidence of record
13 (including the reports of the Department of State on country conditions), and any
14 inaccuracies or falsehoods in such statements, without regard to whether an
15 inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim,
16 or any other relevant factor." *Id.* § 1158(b)(1)(B)(iii). "We defer . . . to an IJ's
17 credibility determination unless, from the totality of the circumstances, it is plain
18 that no reasonable fact-finder could make such an adverse credibility ruling."
19 *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008); accord *Hong Fei Gao*, 891

1 F.3d at 76. Substantial evidence supports the agency's adverse credibility
2 determination.

3 First, the agency reasonably relied on Djerasimovic's inconsistent testimony
4 regarding his arrest in the United States. Before he was confronted with the
5 police report, he testified that he was found not guilty of sexual abuse and forcible
6 touching, and he claimed never to have met the alleged victim. However, once
7 confronted with the police report, he testified that the alleged victim had been to
8 his apartment twice and once stayed overnight. Contrary to Djerasimovic's
9 position, the agency may rely on an inconsistency "without regard to whether [it]
10 . . . goes to the heart of the . . . claim." 8 U.S.C. § 1158(b)(1)(B)(iii). The agency
11 did not err here because the inconsistency called Djerasimovic's credibility into
12 question generally, and as discussed further below, there were other credibility
13 issues with the past persecution claim. *See Sieve v. Gonzales*, 480 F.3d 160, 170–71
14 (2d Cir. 2007) (noting that even "[f]alse evidence that is wholly ancillary" still may
15 "reinforce [an] adverse credibility ruling otherwise supported by material
16 discrepancies").

17 The agency also reasonably found implausible Djerasimovic's testimony
18 that he was assaulted in Serbia because he was a member of the Serbian True
19 Orthodox Church. "It is well settled that . . . an IJ is entitled to consider whether

1 the applicant's story is inherently implausible." *Wensheng Yan v. Mukasey*, 509
2 F.3d 63, 66 (2d Cir. 2007). "[T]he IJ must point to valid, or specific, cogent reasons
3 for rejecting an applicant's testimony and may not reject testimony based on
4 speculation." *Ming Xia Chen v. BIA*, 435 F.3d 141, 145 (2d Cir. 2006) (internal
5 quotation marks and citations omitted).

6 Here, the agency pointed to both Djerasimovic's testimony that he was
7 wearing secular clothes at the time of the attack, and his inability—despite being
8 asked multiple times—to adequately explain how he was recognized as a member
9 of the Serbian True Orthodox Church. While Djerasimovic argues in his petition
10 before this Court that these attacks happened near a church, and that is how his
11 attackers could identify him as a member of the Serbian True Orthodox Church,
12 he did not testify to this fact in front of the IJ. Moreover, Djerasimovic has not
13 identified country conditions evidence corroborating the existence of the Serbian
14 True Orthodox Church or persecution of its members by the Serbian government
15 or the Serbian Orthodox Church.

16 The record also supports the agency's finding that Djerasimovic's hesitant
17 and nonresponsive testimony further undermined his credibility. "[D]emeanor
18 is paradigmatically the sort of evidence that a fact-finder is best positioned to
19 evaluate," *Li Zu Guan v. INS*, 453 F.3d 129, 140 (2d Cir. 2006), so we "grant[]

1 particular deference in applying the substantial evidence standard to credibility
2 findings based on demeanor,” *Dong Gao v. BIA*, 482 F.3d 122, 126–27 (2d Cir. 2007)
3 (internal quotation marks omitted). Djerasimovic was not responsive to
4 questions about what injuries he sustained. He also repeated long, unresponsive
5 narratives. For example, when asked if he knew his attackers, he repeated his
6 account of where the attack happened and what the police did, rather than
7 answering the question. *See Zhu Yun Zhang v. U.S. I.N.S.*, 386 F.3d 66, 73 (2d Cir.
8 2004) (“A fact-finder . . . is in the best position to discern . . . whether a witness
9 who hesitated in a response was nevertheless attempting truthfully to recount
10 what he recalled of key events or struggling to remember the lines of a carefully
11 crafted ‘script[.]’”), *overruled on other grounds by Shi Liang Lin v. U.S. Dep’t of Just.*,
12 494 F.3d 296 (2d Cir. 2007).

13 Finally, the agency reasonably concluded that Djerasimovic failed to
14 rehabilitate his credibility with corroborating evidence. “An applicant’s failure
15 to corroborate his or her testimony may bear on credibility, because the absence of
16 corroboration in general makes an applicant unable to rehabilitate testimony that
17 has already been called into question.” *Biao Yang v. Gonzales*, 496 F.3d 268, 273
18 (2d Cir. 2007). For example, Djerasimovic testified that his siblings in Serbia were
19 also receiving threats from members of the Serbian Orthodox Church, but he did

1 not submit letters from them to support his claims. Contrary to Djerasic's
2 position here, because his credibility was in question, his testimony alone was not
3 sufficient to meet his burden. See 8 U.S.C. § 1158(b)(1)(B)(ii) ("The testimony of
4 the applicant may be sufficient to sustain the applicant's burden without
5 corroboration, but only if . . . the applicant's testimony is credible, is persuasive,
6 and refers to specific facts sufficient to demonstrate that the applicant is a
7 refugee.").

8 Given the inconsistencies, implausibility, lack of responsiveness, and lack of
9 corroboration of ongoing threats, substantial evidence supports the adverse
10 credibility determination. See *id.* § 1158(b)(1)(B)(iii); *Xiu Xia Lin*, 534 F.3d at 167;
11 see also *Likai Gao v. Barr*, 968 F.3d 137, 145 n.8 (2d Cir. 2020) ("[E]ven a single
12 inconsistency might preclude an [applicant] from showing that an IJ was
13 compelled to find him credible. Multiple inconsistencies would so preclude even
14 more forcefully."). The adverse credibility determination is dispositive of
15 withholding of removal and CAT relief because both forms of relief are based on
16 the same factual predicate. See *Hong Fei Gao*, 891 F.3d at 76.

