

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Ye v. Barr

Ye v. Barr, No. 17-1425 (2d Cir. June 4, 2019) · No. 17-1425 · Decided June 4, 2019

SUMMARY

The Second Circuit granted Ye's petition for review of the BIA's denial of asylum, withholding of removal, and CAT relief, vacating the decision and remanding for further proceedings. The court held that substantial evidence did not support the adverse credibility determination because the IJ's demeanor finding was contradicted by the record (Ye responsively answered why she was Christian), the purported inconsistency regarding detention dates was a miscalculation, and the IJ improperly speculated about Chinese recordkeeping practices without supporting evidence. The case addresses standards for credibility determinations under 8 U.S.C. § 1158(b)(1)(B)(iii), including the requirement that demeanor findings be supported by the record and that foreign recordkeeping practices not be assumed without evidence.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Robert D. Sack; Gerard E. Lynch; Christopher F. Droney
JURISDICTION	Federal
DECIDED	June 4, 2019
DOCKET	17-1425
DISPOSITION	vacated
PROCEDURAL POSTURE	Petition for review of a Board of Immigration Appeals decision affirming an Immigration Judge's denial of asylum, withholding of removal, and CAT relief.
STANDARD OF REVIEW	Substantial evidence; the court reviews both BIA and IJ decisions. Credibility determinations are reviewed under the totality of circumstances, deferring unless no reasonable fact-finder could make such a ruling.
PRECEDENTIAL VALUE	non-precedential
PARTIES	YanJun Ye v. William P. Barr, United States Attorney General

TOPICS

PRACTICE AREAS

Immigration

QUESTIONS PRESENTED

1. Whether the agency's adverse credibility determination was supported by substantial evidence.

HOLDINGS

1. The adverse credibility determination was not supported by substantial evidence because the IJ's demeanor finding was contradicted by the record, the inconsistency about detention dates was a miscalculation, and the agency speculated about foreign recordkeeping practices.

KEY QUOTATIONS

"The IJ found that Ye was not responsive when asked why she was a Christian. But the transcript reveals that Ye responsively answered the question by stating, 'Because I believe in God.'" (3)

"[A]bsent record evidence of practices in foreign countries, the IJ must not speculate as to the existence or nature of such practices." (4)

FACTUAL BACKGROUND

Ye, a native and citizen of China, applied for asylum, withholding of removal, and CAT relief based on her Christian faith and related detention. The IJ found her not credible, citing demeanor, an inconsistency in the length of detention, and discrepancies with documentary evidence. The court found these findings were not supported by substantial evidence.

PROCEDURAL HISTORY

The BIA affirmed the IJ's October 5, 2015 decision denying Ye's application. Ye petitioned for review to the Second Circuit.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the order.

CASES CITED

- Zaman v. Mukasey, 514 F.3d 233 (2d Cir. 2008)
- Hong Fei Gao v. Sessions, 891 F.3d 67 (2d Cir. 2018)

- Xiu Xia Lin v. Mukasey, 534 F.3d 162 (2d Cir. 2008)
- Majidi v. Gonzales, 430 F.3d 77 (2d Cir. 2005)
- Li Hua Lin v. U.S. Dep't of Justice, 453 F.3d 99 (2d Cir. 2006)
- Cao He Lin v. U.S. Dep't of Justice, 428 F.3d 391 (2d Cir. 2005)

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