

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Niang v. Barr

No. 18-1692, United States Court of Appeals for the Second Circuit (September 4, 2020)

SUMMARY

****Niang v. Barr, 2d Cir. 2020 (unpublished).**** The Second Circuit denied a petition for review of the BIA's denial of asylum, withholding of removal, and CAT relief, holding that substantial evidence supported the adverse credibility determination. The court found that the agency reasonably relied on inconsistencies between the applicant's asylum application and testimony regarding persecution in Brazil, as well as the lack of reliable corroborating evidence, despite a minor error in the vagueness finding. The adverse credibility determination was dispositive of all three claims because they shared the same factual predicate.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	José A. Cabranes; Denny Chin; Joseph F. Bianco
JURISDICTION	Federal
DECIDED	September 4, 2020
DOCKET	18-1692
DISPOSITION	denied
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 for credibility determinations; abuse of discretion standard; 8 U.S.C. § 1252(b)(4)(B).
PRECEDENTIAL VALUE	Unpublished
PARTIES	Abdou Lahad Niang v. William P. Barr, United States Attorney General

TOPICS

immigration asylum administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether substantial evidence supports the agency's adverse credibility determination.
2. Whether the agency erred in finding Niang's testimony vague without seeking further details.

HOLDINGS

1. Yes, substantial evidence supports the adverse credibility determination given the inconsistency in Niang's statements regarding persecution in Brazil and his lack of reliable corroboration.
2. The agency erred in finding Niang's description of injuries in Senegal vague without first eliciting further details, but this error was harmless because the Brazil inconsistency and lack of corroboration independently support the adverse credibility determination.

KEY QUOTATIONS

"We defer . . . to an IJ's credibility determination unless, from the totality of the circumstances, it is plain that no reasonable fact-finder could make such an adverse credibility ruling." (2-3)

"Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, . . . the consistency between the applicant's . . . written and oral statements . . . , the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor." (2)

"An applicant's failure to corroborate his or her testimony may bear on credibility, because the absence of corroboration in general makes an applicant unable to rehabilitate testimony that has already been called into question." (5-6)

"That determination is dispositive of asylum, withholding of removal, and CAT relief because all three claims were based on the same factual predicate." (6-7)

FACTUAL BACKGROUND

Petitioner Abdou Lahad Niang, a native and citizen of Senegal, applied for asylum, withholding of removal, and CAT relief, claiming fear of persecution in Senegal and Brazil. The Immigration Judge found Niang not credible, based in part on inconsistencies between his asylum application and his testimony regarding harm in Brazil. The application described general name-calling and sexual harassment, while the testimony described a specific attack by a co-worker's ex-boyfriend and a group of friends. The IJ also found Niang's description of injuries in Senegal vague, but the court noted that the IJ should have sought further details. Despite this error, the court found that the inconsistency regarding Brazil and the lack of reliable corroboration provided substantial evidence for the adverse credibility determination.

PROCEDURAL HISTORY

Petitioner Abdou Lahad Niang, a native and citizen of Senegal, seeks review of a May 18, 2018 decision of the BIA affirming an October 5, 2017 decision of an Immigration Judge denying his application for asylum, withholding of removal, and relief under the Convention Against Torture.

DISPOSITION

denied

CASES CITED

- Yun-Zui Guan v. Gonzales, 432 F.3d 391, 394 (2d Cir. 2005)
- Hong Fei Gao v. Sessions, 891 F.3d 67, 76 (2d Cir. 2018)
- Xiu Xia Lin v. Mukasey, 534 F.3d 162, 167 (2d Cir. 2008)
- Ming Shi Xue v. BIA, 439 F.3d 111, 122 (2d Cir. 2006)
- Lianping Li v. Lynch, 839 F.3d 144, 150 (2d Cir. 2016)
- Gurung v. Barr, 929 F.3d 56, 61 (2d Cir. 2019)
- Siewe v. Gonzales, 480 F.3d 160, 168 (2d Cir. 2007)
- Biao Yang v. Gonzales, 496 F.3d 268, 273 (2d Cir. 2007)
- Y.C. v. Holder, 741 F.3d 324, 332 (2d Cir. 2013)
- Xiao Ji Chen v. U.S. Dep't of Justice, 471 F.3d 315, 335 (2d Cir. 2006)
- Paul v. Gonzales, 444 F.3d 148, 156-57 (2d Cir. 2006)