

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Ling Lin v. Holder

526 F. App'x 54 (2d Cir. 2013) · No. 11-2672-ag · Decided June 6, 2013

SUMMARY

The Second Circuit denied Ling Lin's petition for review of a Board of Immigration Appeals decision denying asylum, withholding of removal, and Convention Against Torture relief. The court upheld the agency's adverse credibility determination based on striking similarities among statements submitted by Lin, her mother, and her boyfriend. The court dismissed as moot Lin's pending motion for a stay of removal.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	John M. Walker, Jr.; Reena Raggi; Susan L. Carney
JURISDICTION	Federal
DECIDED	June 6, 2013
DOCKET	11-2672-ag
DISPOSITION	writ_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 Convention Against Torture relief.
STANDARD OF REVIEW	The court reviewed the IJ's decision as modified by the BIA's decision. Agency factual findings, including an adverse credibility determination, were reviewed under the substantial-evidence standard, and the court applied 8 U.S.C. § 1252(b)(4)(B).
PRECEDENTIAL VALUE	Unpublished summary order; nonprecedential under the court's stated notice.
PARTIES	Ling Lin v. Eric H. Holder, Jr., United States Attorney General

TOPICS

asylum

removal proceedings

judicial review of agency action

appellate procedure

administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the agency's adverse credibility determination was supported by substantial evidence despite a potentially flawed inconsistency finding.
2. Whether the similarities between Lin's statement and statements from her mother and boyfriend reasonably supported the adverse credibility determination.
3. Whether the agency erred in denying asylum, withholding of removal, and CAT relief.

HOLDINGS

1. Even assuming without deciding that the IJ's inconsistency finding was flawed, remand was unwarranted because the striking similarities among the submitted statements independently provided substantial evidence supporting the adverse credibility determination.
2. The agency did not err in denying asylum, withholding of removal, and relief under the Convention Against Torture because the adverse credibility determination was supported by substantial evidence.

KEY QUOTATIONS

“Remand is not appropriate when “there is no realistic possibility that, absent the error[], the IJ or BIA would have reached a different conclusion” regarding Lin’s credibility.” (at 54)

“The striking similarities between the statement Lin submitted in support of her asylum application and statements from Lin’s mother and boyfriend provide ample support for the agency’s adverse credibility finding.” (at 54-55)

“The agency’s adverse credibility determination was thus supported by substantial evidence.” (at 55)

FACTUAL BACKGROUND

Lin, a native and citizen of the People's Republic of China, sought protection based on an alleged forced abortion, an RMB 8,000 family-planning fine, and a threat of arrest for nonpayment. The agency found her not credible because her written statement closely resembled statements submitted by her mother and boyfriend in length, structure, content, and phrasing. Lin argued that the similarity finding and an inconsistency finding were erroneous, but the court upheld the adverse credibility determination based on the similarities alone.

PROCEDURAL HISTORY

The Immigration Judge in New York City denied Lin's applications for asylum, withholding of removal, and CAT relief on March 20, 2009. The BIA affirmed on June 6, 2011. The Second Circuit denied the petition for review and dismissed as moot Lin's pending motion for a stay of removal.

DISPOSITION

writ_denied

CASES CITED

- Xue Hong Yang v. U.S. Dep't of Justice, 426 F.3d 520, 522 (2d Cir. 2005)
- Yanqin Weng v. Holder, 562 F.3d 510, 513 (2d Cir. 2009)
- Cao He Lin v. U.S. Dep't of Justice, 428 F.3d 391, 401 (2d Cir. 2005)
- Mei Chai Ye v. U.S. Dep't of Justice, 489 F.3d 517, 524, 526 (2d Cir. 2007)
- Surinder Singh v. BIA, 438 F.3d 145, 148 (2d Cir. 2006)
- Xiu Xia Lin v. Mukasey, 534 F.3d 162, 165-66 (2d Cir. 2008)
- Paul v. Gonzales, 444 F.3d 148, 156 (2d Cir. 2006)

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