

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Ying Li v. Holder

542 F. App'x 73 (2d Cir. 2013) · No. 11-2698-ag · Decided November 21, 2013

SUMMARY

The Second Circuit denied Ying Li's petition for review of the Board of Immigration Appeals' decision affirming the denial of her applications for asylum and withholding of removal. The court upheld the agency's adverse credibility determination based on inconsistencies and lack of corroboration, and concluded that Li failed to establish a well-founded fear of future persecution.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Jon O. Newman; Reena Raggi; Peter W. Hall
JURISDICTION	Federal
DECIDED	November 21, 2013
DOCKET	11-2698-ag
DISPOSITION	denied
PROCEDURAL POSTURE	Petition for review of a Board of Immigration Appeals decision affirming an Immigration Judge's denial of applications for asylum and withholding of removal.
STANDARD OF REVIEW	The court reviewed the agency's factual findings, including its adverse credibility determination and future-persecution determination, under the substantial-evidence standard. Under 8 U.S.C. § 1252(b)(4)(B), those findings are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Ying Li, aka Lian Ji Piao v. Eric H. Holder, Jr., United States Attorney General

TOPICS

[asylum](#) [removal proceedings](#) [judicial review of agency action](#) [standard of review](#) [appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether substantial evidence supported the agency's adverse credibility determination concerning Li's claim of past persecution.
2. Whether substantial evidence supported the agency's conclusion that Li failed to establish a well-founded fear of future persecution based on her activities in the United States.
3. Whether the agency erred in denying asylum and withholding of removal.

HOLDINGS

1. The agency's adverse credibility determination was supported by substantial evidence because Li's testimony contained material inconsistencies concerning her daughter's birth date and the length of her imprisonment, and she failed to provide sufficient corroboration.
2. Li failed to establish a well-founded fear of future persecution because she presented no evidence that Chinese authorities knew or were likely to learn of her activities in the United States.

KEY QUOTATIONS

“For asylum applications, like Li’s, governed by the REAL ID Act, the agency may, considering the totality of the circumstances, base a credibility finding on an asylum applicant’s demeanor, the plausibility of her account, and inconsistencies in her or her witness’s statements, without regard to whether they go “to the heart of the applicant’s claim.”” (542 F. App'x at 74)

“When an alien seeks relief on the basis of activities that occurred in the United States, she “must make some showing that authorities in h[er] country of nationality are either aware of h[er] activities or likely to become aware of h[er] activities.”” (542 F. App'x at 75)

FACTUAL BACKGROUND

Li, a native and citizen of the People's Republic of China, claimed that she had been imprisoned in China because she assisted North Korean refugees. She also relied on her participation in a human-rights organization in the United States to support a fear of future persecution. The agency found her testimony not credible based on inconsistencies concerning her daughter's birth date and the length of her imprisonment, and also considered her failure to provide corroborating affidavits from her daughter or husband.

PROCEDURAL HISTORY

The Immigration Judge denied Li's applications for asylum and withholding of removal on June 3, 2009. The Board of Immigration Appeals affirmed on June 6, 2011. Li petitioned the Second Circuit for review, and the court denied the petition.

DISPOSITION

denied

CASES CITED

- Jigme Wangchuck v. DHS, 448 F.3d 524, 528 (2d Cir. 2006)
- Xiu Xia Lin v. Mukasey, 534 F.3d 162, 163-64, 165-67 (2d Cir. 2008) (per curiam)
- Majidi v. Gonzales, 430 F.3d 77, 80-81 (2d Cir. 2005)
- Biao Yang v. Gonzales, 496 F.3d 268, 273 (2d Cir. 2007)
- Hongsheng Leng v. Mukasey, 528 F.3d 135, 143 (2d Cir. 2008) (per curiam)
- Jian Xing Huang v. U.S. INS, 421 F.3d 125, 129 (2d Cir. 2005) (per curiam)
- Paul v. Gonzales, 444 F.3d 148, 156 (2d Cir. 2006)

OPINION

PER CURIAM.

11-2698-ag Li v. Holder BIA Weisel, IJ A089 198 097 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 21st day of November, two thousand thirteen. PRESENT: JON O. NEWMAN, REENA RAGGI, PETER W. HALL, Circuit Judges.
_____ YING LI, AKA LIAN JI PIAO, Petitioner, v.
11-2698 NAC ERIC H. HOLDER, JR., UNITED STATES ATTORNEY GENERAL, Respondent.
_____ FOR PETITIONER: Thomas V. Massucci,
New York, New York.

FOR RESPONDENT: Tony West, Assistant Attorney General; Richard M. Evans, Assistant Director; Benjamin J. Zeitlin, Trial Attorney, Office of Immigration Litigation, United States Department of Justice, Washington, D.C. UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

Petitioner Ying Li, a native and citizen of the People's Republic of China, seeks review of a June 6, 2011, decision of the BIA affirming the June 3, 2009, decision of Immigration Judge ("IJ") Robert D. Weisel denying her application for asylum and withholding of removal.

In re Ying Li, No. A089 198 097 (B.I.A. June 6, 2011), aff'g No. A089 198 097 (Immig. Ct. N.Y. City June 3, 2009). We assume the parties' familiarity with the underlying facts and procedural history of the case. Under the circumstances of this case, we have reviewed both the IJ's and the BIA's opinions. See *Jigme Wangchuck v. DHS*, 448 F.3d 524, 528 (2d Cir.

2006). The applicable standards of review are well-established. See 8 U.S.C. § 1252(b)(4)(B); see also *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 165-66 (2d Cir. 2008)(per curiam). I. Adverse Credibility Determination/Past Persecution For asylum applications, like Li's, governed by the REAL ID Act, the agency may, considering the totality of the circumstances, base a credibility finding on an asylum applicant's demeanor, the plausibility of her account, and inconsistencies in her or her witness's statements, without regard to whether they go "to the heart of the applicant's claim." 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia Lin*, 534 F.3d at 163-64.

Substantial evidence supports the agency's determination that Li did not testify credibly regarding her claims that she was imprisoned in China because she assisted North Korean refugees. The agency reasonably relied on inconsistencies in the record. See 8 U.S.C. § 1158(b)(1)(B)(iii); see also *Xiu Xia Lin*, 534 F.3d at 163-64, 166-67.

As the agency noted, Li's testimony regarding the birth date of her daughter and the length of her prison term in China was inconsistent with her asylum application and statement in support. These inconsistencies provide substantial support for the agency's adverse credibility determination. See 8 U.S.C. § 1158(b)(1)(B)(iii) (providing that the agency may base a 2 credibility determination on inconsistencies between the applicants statements, and "the consistency of such statements with other evidence of record").

Li argues that the agency's adverse credibility finding was not supported by the record because the IJ did not give Li sufficient opportunity to explain the inconsistencies. The record, however, reflects that, during Li's testimony, she was questioned regarding each inconsistency identified by the agency and given an opportunity to respond. Further, the agency reasonably rejected Li's explanations, as she failed to explain either inconsistency.

See *Majidi v. Gonzales*, 430 F.3d 77, 80-81 (2d Cir. 2005) (finding that an agency need not credit an applicant's explanations unless those explanations would compel a reasonable fact-finder to do so). Li argues that the agency erred in relying on her lack of corroboration as a basis for its adverse credibility finding.

However, an applicant's failure to corroborate testimony may bear on credibility, either because the absence of particular corroborating evidence is viewed as suspicious, or "because the absence

of corroboration in general makes an applicant unable to rehabilitate testimony that has already been called into question.” See *Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir.

2007). Thus, the agency reasonably concluded that, in light of Li’s lack of credibility, her failure to offer affidavits from her daughter or husband in support of her claim that she was imprisoned in China further damaged her credibility. Given the inconsistencies in the record and in light of Li’s failure to corroborate her claims, the agency’s adverse credibility determination regarding Li’s claim that she suffered past persecution in China was supported by substantial evidence.

See 8 U.S.C. § 1158(b)(1)(B)(iii); see also *Xiu Xia Lin*, 534 F.3d at 163-64 (explaining that this Court “defer[s] 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”). 3 II. Burden of Proof/Well-Founded Fear of Future Persecution Substantial evidence also supports the agency’s conclusion that Li failed to demonstrate a well-founded fear of future persecution.

When an alien seeks relief on the basis of activities that occurred in the United States, she “must make some showing that authorities in h[er] country of nationality are either aware of h[er] activities or likely to become aware of h[er] activities.” *Hongsheng Leng v. Mukasey*, 528 F.3d 135, 143 (2d Cir. 2008)(per curiam).

Although Li offered evidence that she had participated in a human rights organization in the United States, she offered no evidence that the authorities in China were aware, or were likely to become aware, of her activities in the United States. Absent “solid support” in the record that her fear is objectively reasonable, Li’s claim that she fears future persecution is “speculative at best.” *Jian Xing Huang v. U.S. INS*, 421 F.3d 125, 129 (2d Cir.

2005)(per curiam). Accordingly, the agency did not err in denying asylum and withholding of removal insofar as those claims were based on her imprisonment in China or her involvement in human rights organizations in the United States. See *Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006).

For the foregoing reasons, the petition for review is DENIED. As we have completed our review, petitioner’s motion for a stay of removal in this petition is DENIED moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2) and Second Circuit Local Rule 34.1(b). FOR THE COURT: Catherine O’Hagan Wolfe, Clerk 4