

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 TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Thurgood Marshall
3 United States Courthouse, 40 Foley Square, in the City of
4 New York, on the 8th day of February, two thousand nineteen.
5

6 **PRESENT:**

7 GUIDO CALABRESI,
8 JOSÉ A. CABRANES,
9 RAYMOND J. LOHIER, JR.,
10 *Circuit Judges.*

11 _____
12
13 **NAZRUL ISLAM,**
14 *Petitioner,*

15
16 v.

17-2639
NAC

18 **MATTHEW G. WHITAKER, ACTING**
19 **UNITED STATES ATTORNEY GENERAL,**
20 *Respondent.*

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22
23 **FOR PETITIONER:** Salim Sheikh, New York, NY.

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25 **FOR RESPONDENT:** Chad A. Readler, Acting Assistant
26 Attorney General; Melissa Neiman-
27 Kelting, Assistant Director; Jacob
28 A. Bashyrov, Trial Attorney,
29 Office of Immigration Litigation,
30 United States Department of
31 Justice, Washington, DC.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Petitioner Nazrul Islam, a native and citizen of
6 Bangladesh, seeks review of a July 25, 2017, decision of the
7 BIA affirming an October 4, 2016, decision of an Immigration
8 Judge ("IJ") denying his application for asylum, withholding
9 of removal, and relief under the Convention Against Torture
10 ("CAT"). *In re Nazrul Islam*, No. A206 263 716 (B.I.A. July
11 25, 2017), *aff'g* No. A206 263 716 (Immig. Ct. N.Y. City Oct.
12 4, 2016). We assume the parties' familiarity with the
13 underlying facts and procedural history in this case.

14 Under the circumstances of this case, we have reviewed
15 both the BIA's and IJ's decisions. See *Yun-Zui Guan v.*
16 *Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005). We review adverse
17 credibility determinations under a substantial evidence
18 standard. See 8 U.S.C. § 1252(b)(4)(B); *Hong Fei Gao v.*
19 *Sessions*, 891 F.3d 67, 76 (2d Cir. 2018). The governing REAL
20 ID Act credibility standard provides as follows:

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1 Considering the totality of the circumstances, and
2 all relevant factors, a trier of fact may base a
3 credibility determination on the demeanor, candor,
4 or responsiveness of the applicant or witness,. . .
5 the consistency between the applicant's or witness's
6 written and oral statements . . . , the internal
7 consistency of each such statement, the consistency
8 of such statements with other evidence of record .
9 . . . , and any inaccuracies or falsehoods in such
10 statements, . . . or any other relevant factor.

11
12 8 U.S.C. § 1158(b)(1)(B)(iii). "We defer . . . to an IJ's
13 credibility determination unless . . . it is plain that no
14 reasonable fact-finder could make such an adverse credibility
15 ruling." *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir.
16 2008). The agency reasonably relied on inconsistencies
17 between Islam's credible fear interview, his testimony, and
18 his family's letters, as well as his demeanor and lack of
19 reliable corroborating evidence.

20 The agency reasonably relied on inconsistencies
21 regarding the alleged incidents of past persecution. See 8
22 U.S.C. § 1158(b)(1)(B)(iii). Islam initially testified that
23 his father was present at the first incident, but when
24 questioned about what happened to him, he changed his
25 testimony and denied that his father was there. In addition
26 to his changing testimony, his final answer was inconsistent

1 with his father's letter, which alleged that his father was
2 present. As to the fourth alleged incident, when asked
3 whether it was him or his father who was threatened with a
4 knife, he changed his testimony twice and was again
5 inconsistent with his father's letter. These material
6 inconsistencies in the examples of past persecution
7 constitute substantial evidence for the adverse credibility
8 determination. See *Xian Tuan Ye v. Dep't of Homeland Sec.*,
9 446 F.3d 289, 295 (2d Cir. 2006).

10 The agency's determination is bolstered by
11 inconsistencies between Islam's credible fear interview and
12 his testimony. See 8 U.S.C. § 1158(b)(1)(B)(iii). Islam
13 recounted only two of the four incidents of persecution at
14 the credible fear interview, even though he was asked if there
15 were other incidents. Islam's testimony and his answer at
16 the interview were also inconsistent as to how many of the
17 attackers he knew. The agency did not err in relying on the
18 credible fear interview when assessing credibility because
19 the interview record "display[ed] the hallmarks of
20 reliability." *Ming Zhang v. Holder*, 585 F.3d 715, 725 (2d
21 Cir. 2009). The interview record appears to be nearly

1 verbatim in a question and answer format; Islam was asked
2 thoroughly about past persecution and future fears; and Islam
3 had access to a Bengali interpreter and did not express any
4 issues with the interpretation. The agency was not required
5 to credit Islam's explanation that the record was incomplete
6 or that he was tired. *See Majidi v. Gonzales*, 430 F.3d 77,
7 80-81 (2d Cir. 2005) ("A petitioner must do more than offer
8 a plausible explanation for his inconsistent statements to
9 secure relief; he must demonstrate that a reasonable fact-
10 finder would be *compelled* to credit his testimony." (internal
11 quotation marks and citations omitted)).

12 The adverse credibility determination is further
13 bolstered by the IJ's demeanor finding, to which we defer.
14 *Jin Chen v. U.S. Dep't of Justice*, 426 F.3d 104, 113 (2d Cir.
15 2005). The record supports the IJ's finding that Islam
16 testified smoothly on direct examination but repeatedly
17 claimed he could not understand the interpretation on cross-
18 examination.

19 Finally, Islam's corroborating evidence was insufficient
20 to rehabilitate his credibility. *See Biao Yang v. Gonzales*,
21 496 F.3d 268, 273 (2d Cir. 2007) ("An applicant's failure to

1 corroborate his . . . testimony may bear on credibility,
2 because the absence of corroboration in general makes an
3 applicant unable to rehabilitate testimony that has already
4 been called into question"). The IJ reasonably afforded
5 diminished weight to letters from Islam's family and friends
6 in Bangladesh because their authors were not subject to cross-
7 examination and the letters from Islam's father and brother
8 were inconsistent with Islam's testimony. See *Y.C. v. Holder*,
9 741 F.3d 324, 332, 334 (2d Cir. 2013) (holding that the weight
10 of evidence is generally in agency's discretion and deferring
11 to agency's decision to give limited weight to letter from
12 applicant's spouse).

13 Given the inconsistencies within and between Islam's
14 testimony, credible fear interview, and documentary evidence
15 and the lack of reliable corroborating evidence, the totality
16 of the circumstances supports the agency's ruling. See *Xiu*
17 *Xia Lin*, 534 F.3d at 167. Because Islam's claims were all
18 based on the same factual predicate, the adverse credibility
19 determination is dispositive of asylum, withholding of
20 removal, and CAT relief. See *Paul v. Gonzales*, 444 F.3d 148,
21 156-57 (2d Cir. 2006).

