

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 11th day of January, two thousand nineteen.

5
6 **PRESENT:**

7 DENNIS JACOBS,
8 DEBRA ANN LIVINGSTON,
9 CHRISTOPHER F. DRONEY,
10 *Circuit Judges.*

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12
13 **YONGHUAN HAN,**
14 *Petitioner,*

15
16 **v.**

17-1473
NAC

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

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23 **FOR PETITIONER:** Louis H. Klein, The Kasen Law
24 Firm, PLLC, Flushing, NY.

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26 **FOR RESPONDENT:** Chad A. Readler, Acting Assistant
27 Attorney General; Linda S.
28 Wernery, Assistant Director;
29 Gerald M. Alexander, Trial
30 Attorney, Office of Immigration
31 Litigation, United States
32 Department of Justice, Washington,
33 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 Yonghuan Han, a native and citizen of the
6 People's Republic of China, seeks review of an April 10, 2017
7 decision of the BIA affirming a September 1, 2016, decision
8 of an Immigration Judge ("IJ") denying Han's application for
9 asylum, withholding of removal, and relief under the
10 Convention Against Torture ("CAT"). *In re Yonghuan Han*, No.
11 A205 813 593 (B.I.A. Apr. 10, 2017), *aff'g* No. A205 813 593
12 (Immig. Ct. N.Y. City Sept. 1, 2016). We assume the parties'
13 familiarity with the underlying facts and procedural history
14 in this case.

15 Under the circumstances of this case, we have reviewed
16 both the BIA's and IJ's decisions. See *Yun-Zui Guan v.*
17 *Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005). We review adverse
18 credibility determinations under a substantial evidence
19 standard. See 8 U.S.C. § 1252(b)(4)(B); *Xiu Xia Lin v.*
20 *Mukasey*, 534 F.3d 162, 165-66 (2d Cir. 2008). The governing
21 REAL ID Act credibility standard provides as follows:

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

10
11 8 U.S.C. § 1158(b)(1)(B)(iii). "We defer . . . to an IJ's
12 credibility determination unless . . . it is plain that no
13 reasonable fact-finder could make such an adverse credibility
14 ruling." *Xiu Xia Lin*, 534 F.3d at 167.

15 The inconsistencies within Han's own statements and
16 between her testimony and her husband's letter provide
17 substantial evidence for the adverse credibility
18 determination. "[A] material inconsistency in an aspect of
19 [the applicant]'s story that served as an example of the very
20 persecution from which [s]he sought asylum" can provide
21 substantial evidence for an adverse credibility ruling. *Xian*
22 *Tuan Ye v. Dep't of Homeland Sec.*, 446 F.3d 289, 295 (2d Cir.
23 2006) (quoting *Majidi v. Gonzales*, 430 F.3d 77, 81 (2d Cir.
24 2005)). The agency reasonably concluded that Han was not
25 credible because her written statement and testimony provided
26 inconsistent descriptions of her main allegation of past

1 persecution. 8 U.S.C. § 1158(b)(1)(B)(iii); *Xian Tuan Ye*,
2 446 F.3d at 295. Han's written statement reported that she
3 went to the hospital by herself to have an abortion because
4 of pressure from her employer and family planning
5 authorities. However, she testified that five women came to
6 her house and took her by force to the hospital. Han's
7 testimony also introduced inconsistency about the details of
8 the procedure itself. She testified that her hands were tied
9 to the bed, which contradicted her written statement, which
10 reported that she bit her fingers during the abortion.

11 The agency was not required to accept Han's explanation
12 that she had trouble expressing herself in writing, given
13 that the written statement was detailed and Han was
14 represented by counsel when she prepared it. *See Majidi*, 430
15 F.3d at 80 ("A petitioner must do more than offer a plausible
16 explanation for h[er] inconsistent statements to secure
17 relief; [s]he must demonstrate that a reasonable fact-finder
18 would be *compelled* to credit h[er] testimony." (internal
19 quotation marks and citations omitted)). When asked to
20 explain the inconsistency regarding whether her hands were
21 tied down during the abortion, Han stated that the restraint

1 used was not tight and that she could move her arms. The IJ
2 was not required to accept this explanation and reasonably
3 came to a different conclusion, particularly as the IJ
4 witnessed Han's demonstration of how her hands were tied.
5 *See Siewe v. Gonzales*, 480 F.3d 160, 167-68 (2d Cir. 2007)
6 (explaining that we defer to the IJ when competing inferences
7 can be drawn from the evidence).

8 Finally, the letter from Han's husband did not
9 rehabilitate her credibility because it implied that they
10 opted for the abortion for economic reasons and did not
11 reference any use of force. *See Biao Yang v. Gonzales*, 496
12 F.3d 268, 273 (2d Cir. 2007) ("An applicant's failure to
13 corroborate . . . her testimony may bear on credibility,
14 because the absence of corroboration in general makes an
15 applicant unable to rehabilitate testimony that has already
16 been called into question.").

17 Because Han's claims were all based on the same factual
18 predicate, the adverse credibility determination is
19 dispositive of asylum, withholding of removal, and CAT
20 relief. *See Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir.
21 2006).

