

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 12<sup>th</sup> day of October, two thousand eighteen.

5  
6 **PRESENT:**

7 JOSÉ A. CABRANES,  
8 DENNY CHIN,  
9 SUSAN L. CARNEY,  
10 *Circuit Judges.*

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12  
13 **SARVAN SINGH,**  
14 *Petitioner,*

15  
16 **v.**

17-741  
NAC

18 **JEFFERSON B. SESSIONS III,**  
19 **UNITED STATES ATTORNEY GENERAL,**  
20 *Respondent.*

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23 **FOR PETITIONER:**

Anas J. Ahmed, Pannun The Firm,  
P.C., Jackson Heights, NY.

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26 **FOR RESPONDENT:**

Chad A. Readler, Principal Deputy  
Assistant Attorney General;  
Brienne Whelan Cohen, Senior  
Litigation Counsel; Mona Maria  
Yousif, Trial Attorney, Office of  
Immigration Litigation, United  
States Department of 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 Sarvan Singh, a native and citizen of India,  
6 seeks review of a March 3, 2017, decision of the BIA affirming  
7 a February 12, 2016, decision of an Immigration Judge ("IJ")  
8 denying Singh's application for asylum, withholding of  
9 removal, and relief under the Convention Against Torture  
10 ("CAT"). *In re Sarvan Singh*, No. A205 422 053 (B.I.A. Mar.  
11 3, 2017), *aff'g* No. A205 422 053 (Immig. Ct. N.Y. City Feb.  
12 12, 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 the IJ's decisions. *See Yun-Zui Guan v.*  
16 *Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005) (per curiam).  
17 The standards of review are well established. *See* 8 U.S.C.  
18 § 1252(b)(4)(B); *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 165-  
19 66 (2d Cir. 2008) (per curiam) (applying substantial  
20 evidence standard to credibility rulings).

21 In making a credibility determination, the agency must  
22 "consider[] the totality of the circumstances" and may base

1 a finding on the applicant's "demeanor, candor, or  
2 responsiveness, the inherent plausibility of the  
3 applicant's . . . account," inconsistencies in the  
4 applicant's statements or between his statements and other  
5 evidence, and "any other relevant factor." 8 U.S.C.  
6 § 1158(b)(1)(B)(iii); see *Xiu Xia Lin*, 534 F.3d at 164,  
7 166-67. "We defer . . . to an IJ's credibility  
8 determination unless, from the totality of the  
9 circumstances, it is plain that no reasonable fact-finder  
10 could make such an adverse credibility ruling." *Xiu Xia*  
11 *Lin*, 534 F.3d at 167. The inconsistencies among Singh's  
12 statements and his lack of reliable corroboration provide  
13 substantial evidence for the adverse credibility  
14 determination.

15 As an initial matter, Singh contends that the agency  
16 erred in relying on his border interview to assess his  
17 credibility. An IJ may rely on statements made at a border  
18 interview provided that the interview record is reliable.  
19 *Ming Zhang v. Holder*, 585 F.3d 715, 721 (2d Cir. 2009). The  
20 agency reasonably concluded that the record of Singh's border  
21 interview was sufficiently reliable: (1) the record appears  
22 to be a verbatim account of the questions asked and Singh's

1 responses; (2) the interviewer asked for details about  
2 Singh's claim of past harm and his political activities;  
3 (3) Singh answered all questions posed; and (4) Singh  
4 confirmed he understood the Punjabi translator. *See id.* at  
5 721-22; *Ramsameachire v. Ashcroft*, 357 F.3d 169, 179-80 (2d  
6 Cir. 2004).

7       The inconsistencies among Singh's statements at the  
8 border interview, his credible fear interview, and his  
9 hearing provide substantial evidence for the agency's adverse  
10 credibility determination because they relate to Singh's  
11 level of political activity and his allegations of past harm.  
12 *See Xiu Xia Lin*, 534 F.3d at 163-64; *Xian Tuan Ye v. Dep't of*  
13 *Homeland Sec.*, 446 F.3d 289, 295 (2d Cir. 2006) (concluding  
14 that a material inconsistency concerning alleged mistreatment  
15 that formed the basis of the asylum claim was substantial  
16 evidence for an adverse credibility determination). First,  
17 Singh stated at his border interview that he was targeted  
18 because of his father's affiliation with the party and  
19 confirmed that he knew nothing about the Shiromani Akali Dal  
20 Amritsar Party. But he stated at his credible fear interview  
21 that he spent several months putting up posters at the party's  
22 rallies. And at his hearing, Singh did not mention the

1 posters, but testified to attending rallies where he  
2 "raise[d] slogans against [the] Congress Party" and served  
3 food to participants. Second, Singh stated at his border  
4 interview that the police beat him five or six times, but at  
5 both his credible fear interview and hearing, he recounted  
6 only two incidents of police violence.

7 Singh's varied explanations for the inconsistencies were  
8 not compelling. "A petitioner 'must do more than offer a  
9 plausible explanation for his inconsistent statements to  
10 secure relief; he must demonstrate that a reasonable fact-  
11 finder would be *compelled* to credit his testimony.'" *Sk*  
12 *Shahriair Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir. 2005)  
13 (quoting *Zhou Yun Zhang v. INS*, 386 F.3d 66, 76 (2d Cir.  
14 2004)). The agency was not required to accept Singh's  
15 explanations for his misstatements at his border interview,  
16 that he did not remember denying any political activity and  
17 that he gave incorrect answers because he was "scared" and  
18 his "mind . . . was not working correctly." See *Yun-Zui Guan*  
19 *v. Gonzales*, 432 F.3d 391, 397 n.6 (2d Cir. 2005) (per curiam)  
20 (explaining that nervousness during a border interview does  
21 not preclude the agency from relying on interview statements  
22 if the interview is otherwise reliable). Nor was the IJ

1 required to credit Singh's attempt to differentiate between  
2 a party member and a party supporter because he stated at the  
3 border interview that he knew nothing about the Shiromani  
4 Akali Dal Amritsar Party that he later testified to  
5 supporting. See *Majidi*, 430 F.3d at 80.

6 As these inconsistencies undermined Singh's credibility,  
7 the agency reasonably relied on Singh's failure to  
8 rehabilitate his testimony with reliable corroborating  
9 evidence. See *Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d  
10 Cir. 2007) (per curiam). The IJ reasonably declined to give  
11 weight to a non-contemporaneous medical record. *Y.C. v.*  
12 *Holder*, 741 F.3d 324, 332 (2d Cir. 2013) ("We generally defer  
13 to the agency's evaluation of the weight to be afforded an  
14 applicant's documentary evidence."). Nor did the agency err  
15 in declining to credit letters from Singh's father and other  
16 individuals in India because the authors were not available  
17 for cross-examination and Singh's father was an interested  
18 party. See *id.* at 334 (deferring to agency's decision not  
19 to credit letter from applicant's spouse); *In re H-L-H- & Z-*  
20 *Y-Z-*, 25 I. & N. Dec. 209, 215 (BIA 2010) (giving diminished  
21 weight to letters from relatives because they were from  
22 interested witnesses not subject to cross-examination), *rev'd*

1 on other grounds by *Hui Lin Huang v. Holder*, 677 F.3d 130 (2d  
2 Cir. 2012). And Singh did not corroborate the more recent  
3 attack on his mother despite being in regular contact with  
4 her. See *Chuilu Liu v. Holder*, 575 F.3d 193, 198 (2d Cir.  
5 2009) (noting that it is the alien's burden to corroborate  
6 "without prompting from the IJ").

7 Given Singh's inconsistent statements, which go to the  
8 heart of his claim, and the lack of reliable corroboration,  
9 the "totality of the circumstances" supports the agency's  
10 adverse credibility determination. See *Xiu Xia Lin*, 534 F.3d  
11 at 167. The adverse credibility determination is dispositive  
12 of asylum, withholding of removal, and CAT relief because all  
13 three claims are based on the same factual predicate. See  
14 *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006).

15 For the foregoing reasons, the petition for review is  
16 DENIED.

17 FOR THE COURT:  
18 Catherine O'Hagan Wolfe,  
19 Clerk of Court