

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JUN 03 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

YUEXIAN HE,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

No. 05-74936

Agency No. A096-364-874

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted June 1, 2009  
Pasadena, California

Before: RYMER, GRABER, and BEA, Circuit Judges.

Yuexian He, a national and citizen of China, petitions for review of a final order of the Board of Immigration Appeals, affirming an immigration judge's ("IJ") order denying her claim for withholding of removal. We have jurisdiction, 8 U.S.C. § 1252(a)(1), and grant the petition.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The IJ's adverse credibility determination is not supported by "specific, cogent reasons," *Shire v. Ashcroft*, 388 F.3d 1288, 1295 (9th Cir. 2004), that go to the heart of Ms. He's claims, *see Ceballos-Castillo v. INS*, 904 F.2d 519, 520 (9th Cir. 1990). The inconsistencies identified by the IJ are either immaterial or non-existent. Therefore, the adverse credibility finding is not supported by substantial evidence. *See Gui v. INS*, 280 F.3d 1217, 1225 (9th Cir. 2002).

Because there was no basis for finding Ms. He not credible, we accept her description of events in China as true. *See Marcos v. Gonzales*, 410 F.3d 1112, 1118 (9th Cir. 2005). Although the general policy when reversing an adverse credibility determination is to remand to the agency, *see Wang v. Ashcroft*, 341 F.3d 1015, 1023 (9th Cir. 2003), this is one of the rare instances where remand is unnecessary. "[V]ictims of forced abortion are 'entitled by virtue of that fact alone' to withholding of removal." *Tang v. Gonzales*, 489 F.3d 987, 992 (9th Cir. 2007) (quoting *Qu v. Gonzales*, 399 F.3d 1195, 1203 (9th Cir. 2005)). Because Ms. He credibly testified she endured a forced abortion at the hands of Chinese government officials, she is entitled to withholding of removal.

**PETITION GRANTED; WITHHOLDING OF REMOVAL GRANTED.**