

JUN 18 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BIN CHAI,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-73431

Agency No. A095-878-355

MEMORANDUM\*

BIN CHAI,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 05-76291

Agency No. A095-878-355

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

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

Submitted June 11, 2009\*\*  
San Francisco, California

Before: TROTT, McKEOWN, and IKUTA, Circuit Judges.

The IJ's determination that Chai's national identification card was fraudulent was supported by substantial evidence. Chai's submission of the fraudulent national identification card in his application before the immigration judge, and his failure to adequately explain his reasons for using such a card, cut to the heart of Chai's asylum claim. *See Akinmade v. INS*, 196 F.3d 951, 956 (9th Cir. 1999).

The IJ's determination that Chai gave inconsistent testimony about discrepancies in the photographs in his driver's license and notarial birth certificate was also supported by substantial evidence. The IJ found Chai's demeanor to be defensive and contradictory, a finding which supports the adverse credibility determination. *See Singh-Kaur v. INS*, 183 F.3d 1147, 1151-52 (9th Cir. 1999). Accordingly, substantial evidence supports the IJ's adverse credibility finding. *See Desta v. Ashcroft*, 365 F.3d 741, 745 (9th Cir. 2004).

Chai's argument that the IJ contradicted herself fails, because the IJ's finding that Chai was removable to China does not speak to Chai's credibility.

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\*\* The panel unanimously finds this case suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

Given the IJ's adverse credibility determination, substantial evidence supports the IJ's determination that Chai failed to establish eligibility for asylum.

The BIA did not err in denying Chai's motion to reopen. Chai cited *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), in his motion to reopen, but he did not allege that his counsel was ineffective. Rather, Chai indicated that, in his view, the attorney's explanations regarding why he never obtained a notarial certificate of residence were satisfactory. Therefore, Chai's argument that the BIA ignored his ineffective assistance of counsel claim is meritless. Moreover, Chai failed to demonstrate that the new evidence he presented to the BIA, including a notarial certificate of residence, was not previously available and could not have been submitted at his hearing before the IJ. *See* 8 C.F.R. § 1003.2(c)(1). Nor did Chai demonstrate that the new evidence would likely change the result in his case. *See Shin v. Mukasey*, 547 F.3d 1019, 1025 (9th Cir. 2008) (citing *Matter of Coelho*, 20 I. & N. Dec. 464, 473 (BIA 1992)). Accordingly, the BIA did not abuse its discretion by denying Chai's motion to reopen. *See Perez v. Mukasey*, 516 F.3d 770, 773 (9th Cir. 2008).

**PETITION DENIED.**