

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 20 2012

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

XIAO YAN LIN,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-70094

Agency No. A099-667-853

MEMORANDUM*

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

Submitted July 17, 2012**

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

Xiao Yan Lin, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an Immigration Judge's (IJ) decision denying her application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have

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

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

jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence factual findings, applying the new standards governing adverse credibility determinations created by the REAL ID Act. *Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010). We deny the petition for review.

Substantial evidence supports the BIA’s adverse credibility finding based on discrepancies within Lin’s testimony regarding her Chinese passport, which she failed to explain adequately. *See id.* at 1047-48 (adverse credibility determination was reasonable under the REAL ID Act’s “totality of the circumstances” standard). Substantial evidence also supports the agency’s demeanor-based adverse credibility determination, where the IJ specifically noted instances in which Lin refused to answer questions. *See id.* at 1044-45. In the absence of credible testimony, Lin’s asylum and withholding or removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Lin’s CAT claim is based on the same testimony the BIA found not credible, and she points to no other evidence to show it is more likely than not that she would be tortured if returned to China, her CAT claim also fails. *Id.* at 1156-57.

PETITION FOR REVIEW DENIED.