

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 27 2013

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

CHUN XUE,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 12-70319

Agency No. A089-099-727

MEMORANDUM*

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

Submitted September 24, 2013**

Before: RAWLINSON, N.R. SMITH, and CHRISTEN, Circuit Judges.

Chun Xue, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for asylum and withholding of removal.

We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence

* 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).

the agency's factual findings, applying the 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.

Xue claimed that during an incident with Chinese officials, his girlfriend told him to run away, and that he ran to a friend's house. However, a letter Xue submitted from his girlfriend states he was "taken away by family planning officials" during the incident. Substantial evidence supports the agency's adverse credibility determination based on this inconsistency. *See Goel v. Gonzales*, 490 F.3d 735, 739 (9th Cir. 2007) (inconsistency between petitioner's documentary evidence and testimony was a proper basis for an adverse credibility finding); *Shrestha*, 590 F.3d at 1046-47 ("Although inconsistencies no longer need to go to the heart of the petitioner's claim, when an inconsistency is at the heart of the claim it doubtless is of great weight."). Xue's explanations do not compel a contrary result. *See Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000). We reject Xue's unsupported contention that the BIA cherry-picked the facts or failed to consider the totality of circumstances. In the absence of credible testimony, Xue's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.