

MAY 27 2014

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HENG NI,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 10-72480

Agency No. A095-446-774

MEMORANDUM*

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

Submitted May 13, 2014**
Pasadena, California

Before: PREGERSON, REINHARDT, and NGUYEN, Circuit Judges.

Heng Ni petitions for review of a decision of the Board of Immigration Appeals (BIA) affirming the Immigration Judge’s (IJ) adverse credibility finding

* 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).

and concluding that he is ineligible for asylum. We have jurisdiction under 8 U.S.C. § 1252(a)(1) and deny the petition for review.

Ni argues that the IJ and BIA erred, under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), in relying on the testimony and report of a forensic document analyst who found that Ni's notarial birth certificate was counterfeit. We lack jurisdiction to consider this argument because Ni did not raise it in his appeal to the BIA. 8 U.S.C. § 1252(d)(1).

Ni also argues that the adverse credibility finding was not supported by substantial evidence. The IJ found that Ni's notarial birth certificate was counterfeit. Ni contends that he did not know that the birth certificate was fraudulent because his wife sent it to him from China. The IJ found, however, that the birth certificate was created in Los Angeles and for that reason, Ni had reason to know that the document was counterfeit. The IJ's finding distinguishes Ni's case from *Yeimane-Berhe v. Ashcroft*, 393 F.3d 907, 911 (9th Cir. 2004). See *Khadka v. Holder*, 618 F.3d 996, 1001 (9th Cir. 2010). Because the birth certificate was offered to establish Ni's identity, a "key element[] of the asylum claim," the IJ's adverse credibility finding is supported by substantial evidence. *Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Ni's remaining arguments are without merit.

Petition **DENIED.**