

JUN 27 2014

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>XUQING ZHAO,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 12-72049

Agency No. A099-732-104

MEMORANDUM*

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

Submitted June 25, 2013**

Before: HAWKINS, TALLMAN, and NGUYEN, Circuit Judges.

Xuqing Zhao, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s decision denying his application for asylum, withholding of removal, and protection 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 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, 1039-40 (9th Cir. 2010). We deny the petition for review.

Substantial evidence supports the BIA's adverse credibility determination, based on the undisputed testimony from a forensic document analyst that Zhao's identity card, bail receipt, and notice of dismissal from his job were all counterfeit. *Khadka v. Holder*, 618 F.3d 996, 1001 (9th Cir. 2010) (concluding that, among other things, applicant's "failure to disclaim" a fabricated document supported the conclusion that he was aware of the circumstances of its creation). Contrary to Zhao's argument on appeal, the agency considered the totality of the circumstances in denying his claim. In the absence of credible testimony, Zhao's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Zhao's CAT claim is based on the same testimony the BIA found not credible, and the record does not otherwise compel the conclusion that it is more likely than not that he will be tortured if returned to China, his CAT claim also fails. *See id.* at 1156-57.

PETITION FOR REVIEW DENIED.