

OCT 22 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

XINAI HE,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-72309

Agency No. A088-485-275

MEMORANDUM\*

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

Submitted October 14, 2015\*\*

Before: SILVERMAN, BYBEE, and WATFORD, Circuit Judges.

Xinai He, 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

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\* 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, 1039-40 (9th Cir. 2010). We deny the petition for review.

The BIA found He was not credible based on the omission of material events from his asylum application and declaration, as well as his failure to seek corroboration from his brother who lived nearby, and his explanation for failing to do so. *See id.* at 1048 (adverse credibility finding reasonable under totality of the circumstances); *see also Kin v. Holder*, 595 F.3d 1050, 1057 (9th Cir. 2010) (omission from asylum applications of key event forming basis for petitioners' claim supported adverse credibility finding). We reject He's contention that the BIA distorted or mischaracterized the record. In the absence of credible testimony, He's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

**PETITION FOR REVIEW DENIED.**