

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 15 2019

FOR THE NINTH CIRCUIT

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

DESHENG YE,

No. 18-70154

Petitioner,

Agency No. A205-169-795

v.

MEMORANDUM*

WILLIAM P. BARR, Attorney General,

Respondent.

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

Submitted March 13, 2019**

Before: TROTT, SILVERMAN, and TALLMAN, Circuit Judges.

Desheng Ye, a native and citizen of China, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

applying the standards governing adverse credibility determinations created by the REAL ID Act (“Act”). *Shrestha v. Holder*, 590 F.3d 1034, 1039-40 (9th Cir. 2010). We deny the petition for review.

Substantial evidence supports the agency’s adverse credibility determination based on a material inconsistency between Ye’s testimony and his written declaration as to how many times he protested in person the government’s demand that his family sell their produce to the government below market rate, the second allegedly leading directly to his arrest and mistreatment. *See Li v. Ashcroft*, 378 F.3d 959, 964 (9th Cir. 2004) (affirming negative credibility finding even though some of the factors were factually unsupported or irrelevant). Given Ye’s in-court testimony, it was reasonable for the Board to conclude that the inconsistent information in the detailed asylum statement he submitted with his Application for Asylum and Withholding of Removal was designed to gild the lily in his favor.

Ye’s explanations do not compel a contrary conclusion. *See Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000). The Board found his attempted explanation of this admitted discrepancy to be “unconvincing in the context of a claim occurring over such a short period of time and relating to so few incidents.”

Accordingly, without credible testimony to support his application, he did not carry his burden of proof. Thus, the Board did not err in denying his application.

Ye's CAT claim also fails because it rests on the same testimony that the agency found not credible and he points to no other evidence showing it is more likely than not he will be tortured if returned to China. *See id.* at 1156-57.

PETITION FOR REVIEW DENIED.