

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 23 2022

FOR THE NINTH CIRCUIT

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

JIYONG ZHAO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 15-73716

Agency No. A087-723-388

MEMORANDUM\*

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

Submitted June 15, 2022\*\*

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

Jiyong Zhao, 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, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under

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\* 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).

8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings, applying the standards governing adverse credibility determinations under 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 agency’s adverse credibility determination based on inconsistencies between Zhao’s declaration and testimony as to whether he worked again in China after being laid off in 2005, inconsistencies within his testimony as to the names of the churches he attended in the United States, and a lack of detail in his testimony about who was present at the house church when Zhao was arrested. *See Shrestha*, 590 F.3d. at 1048 (concluding adverse credibility determination reasonable under “the totality of circumstances”). Zhao’s explanations for the inconsistencies do not compel a contrary conclusion. *See Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000). Thus, in the absence of credible testimony, in this case, Zhao’s asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Substantial evidence supports the agency’s denial of CAT relief because, even if credible, Zhao failed to show it is more likely than not he would be tortured by or with the consent or acquiescence of the government if returned to China. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009); *see also Wakkary v. Holder*, 558 F.3d 1049, 1068 (9th Cir. 2009) (finding no likelihood of torture).

We do not consider the information from country conditions reports that Zhao references in his opening brief that is not a part of the administrative record considered by the BIA. *See Fisher v. INS*, 79 F.3d 955, 963 (9th Cir. 1996) (en banc).

The temporary stay of removal remains in place until issuance of the mandate.

**PETITION FOR REVIEW DENIED.**