

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 22 2022

FOR THE NINTH CIRCUIT

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

XIUFENG SHEN,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 16-72324

Agency No. A205-752-428

MEMORANDUM\*

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

Submitted September 14, 2022\*\*

Before: O'SCANNLAIN, RAWLINSON, and OWENS, Circuit Judges.

Xiufeng Shen, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's ("IJ") decision denying her applications for asylum, withholding of removal, and protection under the Convention Against Torture

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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).

(“CAT”). Our jurisdiction is governed by 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 in part and dismiss in part the petition for review.

Substantial evidence supports the agency’s adverse credibility determination based on inconsistencies between Shen’s testimony and her asylum application regarding how she obtained her visa and her experience with travel agencies and based on Shen’s demeanor. *See id.* at 1047 (adverse credibility finding reasonable under the totality of the circumstances); *Manes v. Sessions*, 875 F.3d 1261, 1263-64 (9th Cir. 2017) (agency’s demeanor finding was supported where IJ provided “specific, first-hand observations,” and an inconsistency between applicant’s testimony and documentary evidence undermined credibility). Shen’s explanations 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, Shen’s asylum claim fails. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

In her opening brief, Shen does not raise, and therefore waives, any challenge to the agency’s determination that she did not establish eligibility for withholding of removal and CAT protection. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (issues not specifically raised and argued in an

opening brief are waived).

To the extent Shen claims the agency erred in denying a motion to reopen, we lack jurisdiction to review this claim because she did not exhaust it before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency).

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

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**