

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2023

FOR THE NINTH CIRCUIT

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

HAMZA YALDIZ,

No. 19-70385

Petitioner,

Agency No. A077-722-810

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted April 17, 2023**

Before: CLIFTON, R. NELSON, and BRESS, Circuit Judges.

Hamza Yaldiz, a native and citizen of Turkey, petitions pro se for review of the Board of Immigration Appeals' ("BIA") orders dismissing his appeal from an immigration judge's decisions denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"), and

* 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).

determinations that Yaldiz was competent and filed a frivolous asylum application. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for an abuse of discretion the BIA's affirmance of a mental competency determination. *Salgado v. Sessions*, 889 F.3d 982, 987 (9th Cir. 2018). 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.

To the extent Yaldiz raises a colorable legal or constitutional claim over which we retain jurisdiction, the agency's conclusion that Yaldiz was competent to participate in immigration proceedings was not an abuse of discretion. *See Salgado*, 889 F.3d at 987-89; *Matter of M-A-M-*, 25 I. & N. Dec. 474, 479-80 (BIA 2011) (indicia of incompetency in immigration proceedings).

Yaldiz conceded he was removable based on an aggravated felony conviction and a conviction relating to a controlled substance, offenses covered in 8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and 1227(a)(2)(A)(iii). We thus lack jurisdiction to review the agency's denial of asylum and withholding of removal where Yaldiz's contentions do not raise a colorable legal or constitutional claim. *See* 8 U.S.C. § 1252(a)(2)(C), (D).

Substantial evidence supports the agency's adverse credibility determination

based on inconsistencies regarding the harm he suffered, the length of his detention, the locations of his arrests, and with whom he was arrested. *See Shrestha*, 590 F.3d at 1048 (adverse credibility finding reasonable under the totality of the circumstances); *see also Zamanov v. Holder*, 649 F.3d 969, 973-74 (9th Cir. 2011) (omissions supported adverse credibility determination where they did not constitute “a mere lack of detail” but “went to the core of his alleged fear”). Yaldiz’s explanations do not compel a contrary conclusion. *See Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000). Substantial evidence also supports the agency’s denial of CAT protection because Yaldiz’s claim was based on the testimony the agency found not credible, and Yaldiz does not point to any other evidence in the record that compels the conclusion that it is more likely than not he would be tortured in Turkey. *See Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003).

Because Yaldiz in his opening brief does not challenge the agency’s determination that he filed a frivolous asylum application, we do not address it. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013).

We do not consider the materials Yaldiz references in his opening brief that are not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963-64 (9th Cir. 1996) (en banc).

Yaldiz’s motion to terminate (Docket Entry Nos. 16, 18, 20) is denied. *See*

United States v. Rodriguez-Gamboa, 972 F.3d 1148, 1151-55 (9th Cir. 2020).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.