

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 16 2023

FOR THE NINTH CIRCUIT

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

Mildred Akinyi Ondiek,

No. 22-224

Petitioner,

Agency No. A216-530-186

v.

MEMORANDUM*

Merrick B. Garland, U.S. Attorney
General,

Respondent.

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

Argued and Submitted April 21, 2023
Portland, Oregon

Before: RAWLINSON, BEA, and SUNG, Circuit Judges.

Mildred Akinyi Ondiek petitions for review of the Board of Immigration Appeals’ (“BIA”) dismissal of her appeal of the Immigration Judge’s (“IJ”) final order of removal. We have jurisdiction, *see* 8 U.S.C. § 1252, and we deny the petition.

1. Considering the totality of the circumstances, *see Alam v. Garland*, 11 F.4th 1133, 1134 (9th Cir. 2021) (en banc), Ondiek’s admitted falsehood and vague testimony together provide substantial evidence to support the IJ’s

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

adverse credibility finding.

Ondiek told the asylum officer that she completed her first asylum application herself, but she later affirmed and testified that she had received assistance and that she knowingly lied to agency officials because a person purporting to be an attorney told her to do so. While an alien's past lies may not always constitute substantial evidence in support of an adverse credibility finding, *see Li v. Garland*, 13 F.4th 954, 961 (9th Cir. 2021), the circumstances of this case differ from those instances in which we have held that an alien's false statements did not undermine his credibility. *See Singh v. Holder*, 638 F.3d 1264, 1271 (9th Cir. 2011) (explaining that false statements used to flee persecution generally do not undermine credibility). Ondiek's misrepresentation is therefore probative of a lack of veracity. *See Li*, 13 F.4th at 959–60.

The IJ also based his adverse credibility finding on Ondiek's "inability to clearly describe [Orange Democratic Movement (ODM)] political policies and its [*sic*] platform, aside from generic statements" It was error for the IJ to ignore potential cultural differences between American and Kenyan politics and assume that ODM must have political platforms beyond tribal affiliations and electoral reform. *See Lalayan v. Garland*, 4 F.4th 822, 835, 837 (9th Cir. 2021) ("[W]hat seems like common sense to an IJ might be rooted in significant differences between the IJ's and witness's cultural backgrounds and systems."). But even assuming that ODM lacked platforms beyond those mentioned, Ondiek mentioned them only occasionally and indirectly; when asked directly

about her political beliefs, Ondiek generally recited superficial and generalized political slogans. *See id.* at 837–38 (affirming adverse credibility determination because “the IJ was careful not to” make cultural assumptions and instead observed that the alien’s *explanation* was unpersuasive and implausible). Substantial evidence supports that IJ’s determination that Ondiek’s answers lacked sufficient specificity given her claimed decade of involvement with the party and leadership role.

2. The record does not compel the conclusion that Ondiek will more likely than not be tortured with the acquiescence of government officials if removed to Kenya, as is required to obtain relief under the Convention Against Torture. *See Garcia-Milian v. Holder*, 755 F.3d 1026, 1033–34 (9th Cir. 2014).

3. We decline to remand for adjustment of status because Ondiek concedes she is no longer eligible. Ondiek’s motion to supplement the record with a document advising the Court of that concession, *see* Dkt. No. 29, is granted.

PETITION DENIED.