

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 5 2023

FOR THE NINTH CIRCUIT

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

QIANG XU, AKA Yong Xu,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 15-72391

Agency No. A095-310-943

MEMORANDUM*

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

Submitted June 26, 2023**

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

Qiang Xu, 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 ("IJ") decision 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).

determining that he filed a frivolous asylum application. We have jurisdiction under 8 U.S.C. § 1252. We review factual findings for substantial evidence, 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 review de novo questions of law. *Kulakchyan v. Holder*, 730 F.3d 993, 995 (9th Cir. 2013). We deny the petition for review.

Substantial evidence supports the adverse credibility determination based on Xu's admission of using a false identity and inconsistencies between his asylum applications and testimony regarding the timing and circumstances surrounding his arrests and detentions, when he began practicing Falun Gong, how often he distributed fliers, and his employment history. *See Shrestha*, 590 F.3d at 1048 (adverse credibility determination reasonable under "the totality of circumstances"); *Garcia v. Holder*, 749 F.3d 785, 789-91 (9th Cir. 2014) (adverse credibility finding supported where petitioner lied about identity). Xu's explanations do not compel a contrary conclusion. *See Li v. Garland*, 13 F.4th 954, 961 (9th Cir. 2021) (IJ not compelled to accept explanations for discrepancies). Thus, in the absence of credible testimony, in this case, Xu's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

We do not address Xu's contentions as to the merits of his withholding claim

because the BIA did not deny relief on those grounds. *See Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011) (review limited to the grounds relied on by the BIA).

The agency did not err in determining that Xu filed a frivolous asylum application, where he admitted deliberately using his brother's name on the application. *See* 8 U.S.C. § 1158(d)(6); 8 C.F.R. § 1208.20 (2009) (“[A]n asylum application is frivolous if any of its material elements is deliberately fabricated.”); *see also Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003) (an applicant's identity is a key element of an asylum claim).

Because Xu does not challenge the agency's denial of CAT protection, we do not address it. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013).

We reject as unsupported by the record Xu's contention that the agency applied an incorrect standard or otherwise erred in the analysis of his claims.

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

PETITION FOR REVIEW DENIED.