

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2023

FOR THE NINTH CIRCUIT

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

PAWAN KUMAR,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1450

Agency No. A208-616-762

MEMORANDUM*

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

Submitted November 16, 2023**
San Jose, California

Before: MURGUIA, Chief Judge, and PAEZ and FRIEDLAND, Circuit Judges.

Petitioner Pawan Kumar (“Kumar”) appeals a decision and final order of the Board of Immigration Appeals (“BIA”) dismissing his appeal of an Immigration Judge’s (“IJ”) order denying his application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have

* 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).

jurisdiction under 8 U.S.C. § 1252 and deny the petition.

Where the BIA reviews the IJ’s credibility determination for clear error, and “relied upon the IJ’s opinion as a statement of reasons but did not merely provide a boilerplate opinion,” we look to the IJ’s decision as “a guide to what lay behind the BIA’s conclusion.” *Lai v. Holder*, 773 F.3d 966, 970 (9th Cir. 2014) (citation omitted). We “review the reasons explicitly identified by the BIA, and then examine the reasoning articulated in the IJ’s oral decision in support of those reasons,” and do “not review those parts of the IJ’s adverse credibility finding that the BIA did not identify as most significant and did not otherwise mention.” *Id.* (internal quotation marks and citations omitted).

We review questions of law de novo, *Retuta v. Holder*, 591 F.3d 1181, 1184 (9th Cir. 2010), and review the BIA’s “factual findings, including adverse credibility determinations, for substantial evidence,” *Mukulumbutu v. Barr*, 977 F.3d 924, 925 (9th Cir. 2020). Under the substantial evidence standard, we may only disturb the BIA’s factual determinations if Kumar establishes that the record evidence was “so compelling that no reasonable factfinder could fail to find” him credible and eligible for the relief and protection he sought. *INS v. Elias-Zacarias*, 502 U.S. 478, 483–84 (1992); 8 U.S.C. § 1252(b)(4)(B).

In assessing an adverse credibility finding, we look to the “totality of the circumstances[] and all relevant factors.” *Alam v. Garland*, 11 F.4th 1133, 1137

(9th Cir. 2021) (en banc) (quoting 8 U.S.C. § 1158(b)(1)(B)(iii)). In this case, substantial evidence supports the IJ and BIA’s determinations that Kumar was not credible, and therefore that he was not entitled to relief.

“Absent specific examples of evasiveness or inconsistency, a general declaration of evasiveness or inconsistency is insufficient to support adverse credibility.” *Lei Li v. Holder*, 629 F.3d 1154, 1158–59 (9th Cir. 2011). Here though, the IJ gave “specific and cogent reasons in support of [the] adverse credibility determination.” *Shrestha v. Holder*, 590 F.3d 1034, 1044 (9th Cir. 2010) (internal quotation marks and citation omitted). The IJ determined that Kumar was not credible based on his “persistent evasive and unresponsive testimony throughout” the hearing. She observed that Kumar’s “demeanor and cadence in answering the initial question[s]” about his uncle’s motive for targeting him sounded “rehearsed,” and that Kumar’s repeated “unprompted description” of his political beliefs was “unresponsive” to his attorney’s questions. The IJ also cited four examples of Kumar’s evasiveness and non-responsiveness.

The BIA agreed that Kumar was “frequently evasive or nonresponsive” and that his answers “seemed rehearsed.” The BIA further determined that the IJ had properly provided “specific and cogent reasons” supporting her adverse credibility determination. Based on the “totality of the circumstances,” there is substantial evidence supporting the adverse credibility determination upheld by the BIA. *See*

8 U.S.C. § 1158(b)(1)(B)(iii); *Shrestha*, 590 F.3d at 1044; *see also Lalayan v. Garland*, 4 F.4th 822, 839 (9th Cir. 2021) (upholding credibility determination based in part on petitioner’s “vague, evasive, and nonresponsive answers in response to the IJ’s repeated questions” (internal quotation marks omitted)).

The BIA affirmed the IJ’s determination that Kumar had not met his burden to establish a well-founded fear of persecution. In support of this conclusion, the BIA discussed the IJ’s findings regarding the shortcomings of Kumar’s documentary evidence and the finding that Kumar could reasonably relocate within India to avoid future harm. Assuming Kumar sufficiently exhausted his argument regarding the IJ’s relocation finding, Kumar nonetheless fails to demonstrate that the record compels a reversal of the BIA’s determination that he did not meet his burden for asylum or withholding of removal through other documentary evidence. The BIA agreed with the IJ’s decision to afford Kumar’s documentary evidence reduced weight because their authors were not presented for cross-examination. The BIA further found no clear error in the IJ’s findings that both the affidavit submitted by Kumar’s wife and the unsworn statement submitted by a medical doctor that treated Kumar in India lacked detail and omitted critical information. The IJ’s decision to discount the weight afforded to Kumar’s documentary evidence was reasonable under the circumstances, and Kumar has failed to establish otherwise. *See, e.g., Garcia v. Holder*, 749 F.3d 785, 791 (9th Cir. 2014)

(holding that the agency reasonably limited the weight of corroborating documents where the authors were unavailable for cross-examination, the authenticity of the documents relied on the petitioner’s discredited testimony, and the documents did not reveal independent knowledge of the petitioner’s alleged persecution).

Putting aside Kumar’s testimony and the personal documentary evidence, the remaining evidence mainly consists of articles and background materials about Indian politics in general and the enforcement of India’s tenant verification laws and tracking system. These background documents do not compel the conclusion that Kumar suffered past persecution or has a well-founded fear of future persecution. *See, e.g., Berroteran-Melendez v. INS*, 955 F.2d 1251, 1257–58 (9th Cir. 1992) (holding that without credible testimony, there was “no basis for the claim of past persecution,” and petitioners also failed to satisfy the well-founded fear required for asylum and withholding of removal).

Thus, because substantial evidence supports the BIA’s determination that Kumar did not establish past persecution or a well-founded fear of future persecution, we uphold the BIA’s denial of asylum. *See Loho v. Mukasey*, 531 F.3d 1016, 1019 (9th Cir. 2008). Because Kumar did not meet his burden of demonstrating a well-founded fear of future persecution required for asylum, he failed to meet the more demanding “clear probability” standard required for withholding of removal. *Davila v. Barr*, 968 F.3d 1136, 1142 (9th Cir. 2020).

Lastly, substantial evidence supports the BIA's determination that Kumar had not met his burden for CAT protection. The BIA's decision relied on the IJ's determination that, absent credible testimony establishing past harm rising to the level of persecution in India, other record evidence did not show that Kumar experienced past torture or would likely suffer future torture in India. Ultimately, the fact that Kumar suffered harm in the past does not necessarily mean he would be tortured in the future. *See Singh v. Whitaker*, 914 F.3d 654, 663 (9th Cir. 2019); *Guo v. Sessions*, 897 F.3d 1208, 1217 (9th Cir. 2018) (allegation that petitioner would be arrested upon return to China does not establish likelihood of being tortured). And the record does not compel the conclusion that it is more likely than not that Kumar would be tortured if he returned to India.

PETITION DENIED.