

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 15 2024

FOR THE NINTH CIRCUIT

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

XUNYONG CHEN,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1546

Agency No.
A216-558-096

MEMORANDUM*

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

Submitted February 13, 2024**
Honolulu, Hawaii

Before: PAEZ, M. SMITH, and KOH, Circuit Judges.

Xunyong Chen, a native and citizen of China, petitions for review of an order of the Board of Immigration Appeals (BIA) denying his application for asylum and withholding of removal.¹ Chen contends that the Immigration Judge's

* 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).

¹ Chen withdrew his request for relief under the Convention Against Torture.

(IJ) negative credibility finding was not supported by substantial evidence in the record. We have jurisdiction under 8 U.S.C. § 1252(a)(1) and review for substantial evidence the BIA’s adverse credibility determination. *See Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010). Under this “highly deferential standard,” “administrative findings [are] conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” *Garland v. Ming Dai*, 141 S. Ct. 1669, 1677 (2021) (internal quotation marks omitted) (quoting 8 U.S.C. § 1252(b)(4)(B)). We deny the petition for review.

The BIA highlighted five reasons for affirming the IJ’s credibility determination; we therefore limit our review to those conclusions. *See Tekle v. Mukasey*, 533 F.3d 1044, 1051 (9th Cir. 2008) (explaining that “we 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”). 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)). Substantial evidence supports the BIA’s determinations that Chen was not credible, and therefore that he was not entitled to relief.

First, Chen failed to establish that his false statements regarding his education, occupation, savings, address, and purpose of visit on his visa application

were “necessary for the immediate escape from persecution.” *See Singh v. Holder*, 638 F.3d 1264, 1272 (9th Cir. 2011). Although Chen testified that he was involved in a personal dispute with a family planning official, that incident did not excuse his lies on his visa application. Furthermore, Chen failed to establish that he was in imminent danger of persecution when he filed his application. *See id.*; *see also Singh v. Holder*, 643 F.3d 1178, 1181 (9th Cir. 2011) (holding that a “deception” that is “completely unrelated to escaping immediate danger” can support an adverse credibility determination).

Second, Chen’s travel outside of China and his voluntary return constitutes substantial evidence undermining his credibility. *See Loho v. Mukasey*, 531 F.3d 1016, 1017–18 (9th Cir. 2008) (“It is well established in this court that an alien’s history of willingly returning to his or her home country militates against a finding of past persecution or a well-founded fear of future persecution.”). Despite testifying that he was “in hiding” from the Chinese government, Chen traveled to both Japan and Taiwan and willingly returned to China. Chen claims he did not apply for asylum in Japan because he didn’t think asylum would be granted,² and he was going “to hide” in Taiwan but he was only allowed to stay two weeks.

² Before the BIA, Chen submitted new evidence with regard to Japan’s asylum policy. The BIA did not review the evidence because of the BIA’s limited ability to engage in fact finding. Chen now asserts the BIA should have remanded the matter to the IJ. We decline to consider this unexhausted claim. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

These explanations do not compel a contrary conclusion. Chen “was not coerced into returning” to China, and “took minimal steps to investigate the availability of some means of avoiding a return to the country [h]e claims to have feared.” *See id.* at 1018–19.

Third, the implausibility of Chen’s claim that he was able personally to obtain identification cards, a marriage certificate, and other documents in his hometown, Fuqing, when he was allegedly hiding from the Chinese government for violating China’s population control policy constitutes substantial evidence undermining his credibility. *See Singh v. Gonzales*, 439 F.3d 1100, 1110 (9th Cir. 2006) (“[S]kepticism as to the plausibility of [a petitioner’s] account may be a proper basis for finding his testimony is inherently unbelievable, if [the] logical inferences are supported by substantial evidence.”), *overruled on other grounds by Maldonado v. Lynch*, 786 F.3d 1155, 1164 (9th Cir. 2015). Despite Chen’s claim that he was in hiding and living in fear of Chinese authorities, Chen returned to Fuqing for the birth of his third child and to obtain all of his government-issued documents. The BIA was not required to accept Chen’s explanation that the different offices in the Chinese government were not “linked,” especially given his testimony that his problems with the Chinese family planning officials began because Chen did not have a valid marriage certificate. *See Barseghyan v. Garland*, 39 F.4th 1138, 1143 (9th Cir. 2022) (“[I]f the noncitizen does not provide

a plausible explanation, or if the IJ reasonably rejects the proffered explanation, the IJ may rely on that inconsistency to make an adverse credibility determination.”). Moreover, the BIA “reasonably applied common sense to determine that it was not plausible” that Chen would risk being detected by Chinese authorities if he were living in fear as he claimed. *See Lalayan v. Garland*, 4 F.4th 822, 838 (9th Cir. 2021).

Fourth, Chen’s wife’s failure to corroborate Chen’s testimony by (1) signing a privacy waiver for the Department of Homeland Security to review Chen’s wife’s asylum case file when considering Chen’s claims; (2) testifying (in person or by telephone) at his hearing; or (3) presenting an authenticated written statement (which he provided with the statements from other corroborating witnesses) constitutes substantial evidence undermining Chen’s credibility.³ The BIA did not conflate corroboration and credibility. The BIA first concluded that Chen was not credible and then concluded that Chen “did not rehabilitate his [incredible] testimony with sufficient corroborating evidence.” *Mukulumbutu v. Barr*, 977 F.3d 924, 927 (9th Cir. 2020). Additionally, Chen’s arguments that his wife submitted a lengthy statement, he requested a change in venue, and the cost was prohibitive for

³ Before the BIA, Chen submitted an alleged copy of his wife’s asylum application. The BIA did not accept this document because the BIA has limited ability to engage in fact finding and the application was not accompanied by a privacy waiver. Chen again asserts the BIA should have remanded the matter to the IJ. We decline to consider this unexhausted claim. *See Barron*, 358 F.3d at 678.

his wife to travel to Hawaii and testify does not address why Chen's wife (1) failed to sign a privacy waiver, (2) did not appear telephonically, and (3) did not submit an authenticated statement. We have consistently recognized that an applicant's failure "to present easily available, material, non-duplicative, corroborating evidence" "can constitute substantial evidence supporting an adverse credibility determination." *See Sidhu v. INS*, 220 F.3d 1085, 1090–91 (9th Cir. 2000) (noting that applicant's failure to produce corroborating testimony from "the *only* witness to some events that are at the core of his asylum application" may "constitute substantial evidence").

Finally, the BIA properly discounted the abortion certificate Chen submitted to corroborate his claim that his wife was forced to have an abortion because Chen "did not remember this document, could not explain where it came from or establish a chain of custody, and [the] file document was undated." *See Vatyán v. Mukasey*, 508 F.3d 1179, 1185 (9th Cir. 2007) ("Immigration judges retain broad discretion to accept a document as authentic or not based on the particular factual showing presented."). Additionally, the BIA properly considered the lack of corroborating evidence with regard to Chen's hearing disability, which was central to his claim of persecution, and Chen's marriage certificate, which Chen "admitted that someone put an old photo of him together with another photo with his wife."

PETITION FOR REVIEW DENIED.