NOT FOR PUBLICATION

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APR 8 2024

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEWIS ABDUL KALIM SIBOMANA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 23-809 Agency No. A200-179-618 MEMORANDUM*

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

Submitted April 5, 2024**
Pasadena, California

Before: R. NELSON, VANDYKE, and SANCHEZ, Circuit Judges.

Petitioner seeks review of the Board of Immigration Appeals' (BIA) decision dismissing his appeal of the denial by an Immigration Judge (IJ) of asylum, withholding of removal, and Convention Against Torture (CAT) relief. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

* 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).

Where, as here, the BIA agrees with the IJ and adds its own reasoning, this court reviews both decisions. *See Sharma v. Garland*, 9 F.4th 1052, 1059 (9th Cir. 2021). Due process violations are reviewed de novo. *Benedicto v. Garland*, 12 F.4th 1049, 1058 (9th Cir. 2021). This court reviews factual findings, including adverse credibility determinations, for substantial evidence. *Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010). This means that administrative findings of fact are deemed conclusive "unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); *see Shrestha*, 590 F.3d at 1039. Meanwhile, legal questions are reviewed de novo, *see Shrestha*, 590 F.3d at 1048, and Petitioner bears the burden of proving he is eligible for CAT deferral, *see* 8 C.F.R. §§ 1208.16(c)(2), 1208.17(d)(3); 8 U.S.C. § 1229a(c)(4)(A).

1. The BIA did not err in concluding that the incomplete transcript was not a due process violation. To "obtain relief … [Petitioner must] show[] that the violation caused him prejudice, meaning the violation potentially affected the outcome of the immigration proceeding." *Gomez-Velazco v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018). Petitioner has not identified any specific instance of testimony where the transcription error affected the agency decision, and he has thus failed to establish that any error has prejudiced him. *See Mukulumbutu v. Barr*, 977 F.3d 924, 928 (9th Cir. 2020). The BIA therefore did not err in concluding that Petitioner's due process rights were not violated.

2. The IJ's adverse credibility determination is supported by substantial evidence. We must accept administrative findings—such as the adverse credibility determination—as "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); *see also Garland v. Ming Dai*, 593 U.S. 357, 365 (2021). Here, the agency relied on four reasons to reasonably conclude that Petitioner was not credible, and each is supported by the record.

First, the background evidence regarding Victoire Ingabire's imprisonment supports the IJ's conclusion that it was implausible for Petitioner to visit her in prison. *See Lalayan v. Garland*, 4 F.4th 822, 833 (9th Cir. 2021). Given Petitioner's extensive political activities, it was not unreasonable for the IJ to find it implausible that he and a group of other political activists were allowed to visit Ingabire only days after a different group of activists had been turned away. Second, the improbability of Petitioner's 29-year-old uncle having a 26-year-old daughter at the time of Petitioner's escape from Rwanda, Petitioner's demeanor in his explanation that she was his uncle's stepdaughter, and the discrepancies between the signatures on the letter from his uncle and his uncle's ID card, when taken as a whole, support the IJ's conclusion that Petitioner's story regarding his departure from Rwanda was not credible. 8 U.S.C. § 1158(b)(1)(B)(iii). Third, Petitioner embellished his injuries before the IJ, stating for the first time that his "skull was cracked" and he "had a

broken bone in [his] back." This embellishment, added "only after [Petitioner's] unsuccessful appearance before the asylum officer," *Zamanov v. Holder*, 649 F.3d 969, 974 (9th Cir. 2011), further supported the adverse credibility determination, *see Iman v. Barr*, 972 F.3d 1058, 1068 (9th Cir. 2020) (stating that previously omitted facts "are probative of credibility to the extent that later disclosures, if credited, would bolster an earlier, and typically weaker, asylum application"). Finally, Petitioner made inconsistent statements regarding whether Ingabire's lawyer, Peter Erlinder, was present at Petitioner's meeting with Ingabire. Petitioner claimed before the asylum officer that Erlinder had been present, but later stated that Erlinder was not present and that he never said he was. The IJ considered all of the facts and circumstances and concluded that these four issues supported an adverse credibility determination. Because the record does not compel us to conclude otherwise, the determination is supported by substantial evidence.

3. Petitioner failed to present independent evidence establishing his CAT deferral eligibility. The letters submitted by Petitioner either (1) were "derived from [his] own assertions," and therefore undermined by his adverse credibility determination and could not constitute "independent" evidence that he was subject to torture in Rwanda, *Garcia v. Holder*, 749 F.3d 785, 792 (9th Cir. 2014), or (2) fail to allege first-hand accounts of continued interest in Petitioner by Rwandan police. The photographs and medical certificate submitted by Petitioner fail to corroborate

many of his serious injuries. Finally, the police summons submitted by Petitioner says nothing about why the police were summoning him. Ultimately, Petitioner has failed to show that his non-testimonial evidence compels the conclusion that he will more likely than not be tortured upon return to Rwanda. *Shrestha*, 590 F.3d at 1048–49.

4. The agency was not required to allow Petitioner to submit additional corroborative evidence. Where a petitioner's testimony is "otherwise credible," but the "IJ determines that additional corroborative evidence should have been submitted, the IJ must give an applicant notice of what evidence would suffice and an opportunity to provide the evidence or explain why he cannot reasonably obtain it." *Bhattarai v. Lynch*, 835 F.3d 1037, 1043 (9th Cir. 2016). But when the IJ finds a petitioner's "testimony not credible, the IJ [is] not required to give [the petitioner] notice and an opportunity to provide additional corroborating evidence." *Mukulumbutu*, 977 F.3d at 927; *see also Yali Wang v. Sessons*, 861 F.3d 1003, 1009 (9th Cir. 2017) (concluding that the notice and opportunity requirement did not apply because the petitioner "did not satisfy the IJ that her testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that she is a refugee" (cleaned up)). As discussed above, substantial evidence supports the adverse credibility determination and so the IJ was not required to give Petitioner notice and

an opportunity to provide additional corroborating evidence. *Rodriguez-Ramirez v. Garland*, 11 F.4th 1091, 1094 (9th Cir. 2021) (per curiam).

PETITION DENIED.[1]

[1] The pending motion to stay removal (Dkt. 2) and supplemental motion to stay removal (Dkt. 11) are denied as moot.