

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 17 2024

FOR THE NINTH CIRCUIT

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

WEN FU HE,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-2043

Agency No.
A213-126-241

MEMORANDUM*

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

Submitted October 8, 2024**
Honolulu, Hawaii

Before: MURGUIA, Chief Judge, and GRABER and MENDOZA, Circuit Judges.

Wen Fu He, a native and citizen of the People’s Republic of China, petitions for review of a decision by the Board of Immigration Appeals (“BIA”) affirming an immigration judge’s (“IJ”) (collectively, the “agency”) denial of his application

* 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).

for asylum and withholding of removal. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition. “Our review is limited to the BIA’s decision except where the IJ’s opinion is expressly adopted.” *Plancarte Saucedo v. Garland*, 23 F.4th 824, 831 (9th Cir. 2022). We review the agency’s factual findings for substantial evidence, and we review questions of law de novo. *Flores-Rodriguez v. Garland*, 8 F.4th 1108, 1113 (9th Cir. 2021).

1. **Adverse Credibility Determination.** Substantial evidence supports the agency’s adverse credibility finding. We uphold an adverse credibility determination unless “any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *Manes v. Sessions*, 875 F.3d 1261, 1263 (9th Cir. 2017) (per curiam). Accordingly, “only the most extraordinary circumstances will justify overturning an adverse credibility determination.” *Shrestha v. Holder*, 590 F.3d 1034, 1041 (9th Cir. 2010) (citation omitted). The agency provided “specific and cogent reasons” for its adverse credibility determination. *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1185 (9th Cir. 2016) (citation omitted); *see also* 8 U.S.C. § 1158(b)(1)(B)(iii). Mr. He’s vague testimony regarding his religious practice and his mother’s letter, which omits any reference to Mr. He’s continued church attendance, support the IJ’s finding that Mr. He was not credible. *See Singh v. Holder*, 638 F.3d 1264, 1272 (9th Cir. 2011) (“When the IJ has reason in the record to doubt the applicant’s credibility, an

absence of evidence may itself suffice as substantial evidence on the record considered as a whole for rejecting credibility.” (internal quotation marks and citation omitted)); *Lalayan v. Garland*, 4 F.4th 822, 837 (9th Cir. 2021) (“Factual findings, including implausibility findings, ‘are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.’” (citation omitted)). Similarly, Mr. He initially testified that he had only one Chinese identification card, issued in 2015, but his mother sent a Chinese identification card that had been issued in 2007.

2. **Corroborative Evidence.** Substantial evidence supports the agency’s finding that Mr. He’s corroborative evidence was insufficient to rehabilitate his testimony or independently satisfy his burden of proof. Mr. He asserts that letters from his mother and his pastor in Hawaii, along with a penalty receipt, are sufficient and that the IJ improperly conflated adverse credibility and a lack of corroboration. In doing so, Mr. He assumes that the notice-and-opportunity requirement applies, but that requirement applies only when the applicant’s testimony is “otherwise credible.” *Bhattarai v. Lynch*, 835 F.3d 1037, 1043 (9th Cir. 2016). Because substantial evidence supports the agency’s adverse credibility finding and the finding that Mr. He’s corroborative evidence was insufficient, we need not address the notice requirement and instead “defer to the [agency’s] adverse credibility determination.” *Id.*

Even if the IJ erred in some small respects, we consider the “totality of the circumstances” when reviewing an adverse credibility determination, *Alam v. Garland*, 11 F.4th 1133, 1137 (9th Cir. 2021) (en banc) (quoting 8 U.S.C. § 1158(b)(1)(B)(iii)), and we conclude that substantial evidence supports the agency’s conclusion.

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

Petition DENIED.