

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 24 2026

FOR THE NINTH CIRCUIT

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

MEILE SHI; JIFEI FAN,

Petitioners,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 21-70027

Agency Nos.
A206-217-499
A206-217-500

MEMORANDUM*

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

Argued and Submitted June 22, 2026
Honolulu, Hawaii

Before: N.R. SMITH, MILLER, and JOHNSTONE, Circuit Judges.
Dissent by Judge N.R. SMITH.

Meile Shi and her husband Jifei Fan, natives and citizens of China, petition for review of a decision of the Board of Immigration Appeals dismissing their appeal from an immigration judge's order denying their application for asylum, withholding of removal, and relief under the Convention Against Torture (CAT).

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

We have jurisdiction under 8 U.S.C. § 1252(b)(2). We grant the petition for review and remand for further proceedings.

Because the Board “affirmed on the basis of *Matter of Burbano*, we review the [immigration judge]’s decision as if it were the [Board’s] decision.” *Alam v. Garland*, 11 F.4th 1133, 1135 (9th Cir. 2021) (en banc); see *Matter of Burbano*, 20 I. & N. Dec. 872 (B.I.A. 1994). We review an adverse-credibility finding for substantial evidence. *Ani v. Bondi*, 155 F.4th 1118, 1126 (9th Cir. 2025). Under that standard, “administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B).

The adverse-credibility finding is not supported by substantial evidence. The immigration judge determined that Shi falsely embellished her F-1 student visa application because although Shi wrote in the visa application that she worked as a part-time assistant to the president of an arts school, she omitted that work experience from her asylum application. Shi testified that she listed this job because the immigration agency said she “should put down all work experiences that [she] had,” because it would apparently be “more favorable” to show more experience.

A desire to submit a strong application is not itself evidence of falsity, and the immigration judge pointed to no evidence, except the job’s omission from the

asylum application, showing that Shi did not actually hold this job. Shi testified that she omitted the job from the asylum application because her “full-time job was at the trading company,” while the arts school operated only on the weekends, and she believed that she was supposed to list only more “official, formal job[s].” No evidence suggests that Shi was testifying untruthfully on this point.

To be sure, Shi’s omission of her part-time job from her asylum application created an inconsistency between that application and her visa application. But “omissions are less probative of credibility than inconsistencies created by direct contradictions in evidence and testimony.” *Lai v. Holder*, 773 F.3d 966, 971 (9th Cir. 2014). And an omission, or even an inconsistency, does not automatically establish a lack of credibility. *See Ani*, 155 F.4th at 1127. The maxim *falsus in unum, falsus in omnibus*—false in one thing, false in everything—allows immigration judges to make adverse-credibility findings based on “intentional falsehoods [that] involve[] ‘deliberate deception’ of immigration authorities,” as well as “material falsehoods, even when they are not central to the basis for the present claim for immigration relief.” *Id.* at 1130 (quoting *Singh v. Holder*, 643 F.3d 1178, 1181 (9th Cir. 2011)). But no evidence in the record suggests any intentional falsehood, and the agency did not explain how Shi’s employment at the arts school was material.

The Board stated that the purportedly false statement in the visa application “is but one of many reasons for the adverse-credibility finding,” but the other reasons also fail. The immigration judge found it implausible that Shi, who graduated from college in China, would not have known about the United States asylum process or the specifics of China’s one-child policy. But nothing in the record suggests that a Chinese college education would impart knowledge of the asylum laws of the United States or the details of China’s population-control policy. The enforcement of China’s policy varies “significantly from place to place,” and the immigration judge did not point to anything in the record indicating that the region where Shi lived strictly enforced the policy or otherwise gave her notice of it. Instead, the immigration judge asserted that Shi could have learned about the policy from her parents, but the record offers no reason why Shi’s parents would have had a more comprehensive knowledge of the policy than Shi did. The immigration judge engaged in impermissible speculation, not an assessment of the evidence in the record. *See Chawla v. Holder*, 599 F.3d 998, 1004 (9th Cir. 2010).

The immigration judge also found that Shi’s claim of resting in bed for two weeks after her abortion was an “embellishment meant to dramatize her story,” and that Shi’s reluctance to discuss her abortion with her doctors in the United States was implausible because “[s]urely, one would want to provide her doctors with all

of the pertinent information regarding her gynecological history.” But Shi’s testimony was consistent: She testified to the trauma of the forced abortion, and she said that after the abortion, she “felt pain and uncomfortable in [her] lower body” and was “rather depressed.” She stated that she did not talk to her doctor about it because she “didn’t want to bring this incident up all over again.” The immigration judge pointed to no evidence in the record to contradict Shi’s account and merely speculated on how a woman would behave after an abortion. “Such speculation cannot be used to support the adverse credibility finding.” *Chawla*, 599 F.3d at 1004.

Nor can a lack of corroboration sustain the agency’s adverse-credibility determination. *See Lai*, 773 F.3d at 976. Shi, “being otherwise credible, [was] entitled to notice that [s]he need[ed] to produce corroborative evidence and an opportunity to either produce the evidence or explain why it is unavailable.” *Id.* (internal quotation marks omitted); *see also Bhattarai v. Lynch*, 835 F.3d 1037, 1043–44 (9th Cir. 2016). Shi was not given that notice. Although the immigration judge found that “[t]he most glaring issue in this case was [Shi’s] husband” and his limited testimony, she gave Shi no notice that such “key corroborative evidence [was] missing.” *Bhattarai*, 835 F.3d at 1043. The immigration judge also noted that Shi’s father did not mention that he lost Shi’s abortion-related hospital documents when he moved, but the immigration judge never gave Shi an

opportunity to explain why that detail might have been missing from her father's letter. Finally, the immigration judge stated that Shi should have presented a letter from her mother "corroborating her daughter's story," but Shi had already provided a letter from her father to that effect, and "where an applicant produces credible corroborating evidence to buttress an aspect of [her] own testimony," she does not need to "produce additional evidence." *Sidhu v. INS*, 220 F.3d 1085, 1091 (9th Cir. 2000).

The Board's adverse-credibility determination is not supported by substantial evidence. Because the Board's decision was based on that erroneous determination, we grant the petition and remand petitioners' claims for asylum and withholding of removal to the Board for further proceedings.

Petitioners also sought relief under the Convention Against Torture, but they did not address that claim before the Board or in their brief before this court. Because that claim is unexhausted and forfeited, we do not consider it.

The motion for a stay of removal (Dkt. No. 1) is granted.

PETITION GRANTED; REMANDED.

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N.R. SMITH, Senior Circuit Judge, dissenting:

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Let us start with where my colleagues and I agree: We agree that Shi listed her assistance at her uncle's arts school as work experience on her visa application, even though she did not deem that same experience "official" or "formal" enough to include in her asylum application. We agree that Shi claimed not to know about the specifics of China's one-child policy or the United States immigration process, even though she graduated from college in China and spent extensive time in the United States navigating the visa system. And we agree that Shi neglected to tell her doctors in the United States about her gynecological history, even though she claimed to have been bedridden for weeks following a traumatic forced abortion in China. Not only do my colleagues and I agree on all these points, but the immigration judge and the Board of Immigration Appeals (BIA) did too.¹

Now the fundamental question in this case: If we agree on so much, how then do we reach such different results? Answer: Application of the standard of review.

The standard of review restricts our review to one for substantial evidence, meaning we must uphold the agency's determination "unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C.

¹ "Because the BIA cited *Matter of Burbano* and also provided its own analysis in this case, we review both the BIA[']s and IJ's decisions." *Posos-Sanchez v. Garland*, 3 F.4th 1176, 1182 (9th Cir. 2021).

§ 1252(b)(4)(B). Thus, in reviewing a case like this, we should look at the agency's decision and the supported findings of fact. Then we ask whether the record compels a decision contrary to the agency's. This disposition evidences that my colleagues prefer to be the factfinders.

The immigration judge's decision reflects a thorough analysis of "the totality of circumstances and all relevant factors" necessary for an adverse credibility determination, *Ani v. Bondi*, 155 F.4th 1118, 1126 (9th Cir. 2025) (citation omitted), including the "the inherent plausibility of [Shi's] account," "the consistency of [Shi's written and oral] statements with other evidence of record," and "any inaccuracies or falsehoods in such statements," 8 U.S.C.

§ 1158(b)(1)(B)(iii). The immigration judge compared the inconsistent work experience listed in Shi's visa and asylum applications and concluded that Shi had inaccurate information in one place or the other. The immigration judge recognized that Shi went to college in China, and the immigration judge determined that it was implausible such a highly educated woman would be ill-informed about China's one-child policy. The immigration judge noted how frequently Shi took advantage of the immigration system in the United States and found it suspicious that she suddenly lacked any knowledge about asylum after learning that she might have to go back to China. And the immigration judge reviewed Shi's gynecological records, and questioned why she would not tell

doctors about prior complications with a forced abortion before receiving care for a new pregnancy.² Reasonable minds might disagree about the immigration judge's assessment of these facts. However, when considering the totality of the circumstances, a reasonable mind could instead conclude that it is a valid assessment. Respecting our limited role as a court of review and not first view, we should uphold the immigration judge's determination as one permissible within its discretion. *See Ani*, 155 F.4th at 1126. Instead, what do my colleagues do?

1. My colleagues import a materiality requirement into the adverse credibility assessment. They concede that “Shi’s omission of her part-time job from her asylum application created an inconsistency between that application and her visa application,” but they argue that the inconsistency was not “material” enough to support the adverse credibility determination. However, the law is clear. The immigration judge need not pay any “regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor.” 8 U.S.C. § 1158(b)(1)(B)(iii). “[E]ven minor inconsistencies that have a bearing on a petitioner’s veracity may constitute the basis for an adverse credibility determination.” *Ani*, 155 F.4th at 1127 (citation omitted). My colleagues ignore that law. *See Li v. Garland*, 13 F.4th 954, 960–61 (9th Cir.

² My colleagues make no mention of the fact that Shi also failed to complete the programs for which she received F-1 visa extensions to complete, but that too supports the immigration judge's adverse credibility determination.

2021) (holding false information in asylum and visa applications supported adverse credibility determination).³

2. My colleagues “flip[]” the standard of review on its head. *Garland v. Ming Dai*, 593 U.S. 357, 368 (2021). They reject the immigration judge’s implausibility findings because they say “nothing in the record” supports them. But as my colleagues’ own analysis demonstrates, that is not true. The immigration judge’s implausibility findings are supported by evidence in the record: (1) in support of its finding regarding Shi’s knowledge of United States asylum laws, the immigration judge relied on the evidence that Shi was highly educated and took frequent advantage of the immigration system; (2) in support of its implausibility finding regarding Shi’s knowledge of China’s population control policies, the immigration judge again relied on Shi’s college education and on country conditions evidence that stated “[i]t is illegal in almost all provinces for a

³ My colleagues’ discussion of the *falsus in unum, falsus in omnibus* doctrine fights a strawman. As my colleagues acknowledge, the agency’s adverse credibility determination rests not only the inconsistency between Shi’s visa and asylum applications, but also on “many [other] reasons” too. However, even if we were to consider the *falsus* maxim, my colleagues are wrong to suggest that “no evidence in the record suggests any intentional falsehood.” As the government noted at oral argument, establishing non-immigrant intent was critical for Shi to obtain her F-1 student visa, and Shi would have struggled to do that without the arts school experience. Indeed, Shi admitted that she did not actually view her work at the arts school—which was just to help her uncle’s business—as “an official formal job.” Yet she nonetheless characterized it as such in her visa because she thought it would make her application look more “favorable.”

single woman to have a child”; and (3) in support of its implausibility finding regarding Shi’s claim of bed rest, the immigration judge relied on Shi’s testimony that she never complained of any such symptoms to doctors in the United States.

Thus, my colleagues’ issue is not whether there is *any* evidence in the record to support the immigration judge’s implausibility findings.⁴ Rather, their complaint is that the evidence fails to create “an *express* conflict between two points in [Shi’s] testimonial or documentary evidence.” *Lalayan v. Garland*, 4 F.4th 822, 835 (9th Cir. 2021) (emphasis added); *see, e.g.*, Maj. Disp. 4 (noting gap in record evidence about whether college education “impart[s] knowledge” regarding United States immigration law); *id.* (noting gap in record about whether the region where Shi lived “enforced [population-control] policy or otherwise gave her notice of it”); *id.* at 5 (noting lack of evidence in record “contradict[ing]” Shi’s explanation for her failure to report her abortion to medical providers in the United States). But again, my colleagues misconstrue the law in a way that our caselaw has already rejected. An implausibility finding must be reviewed in light of

⁴ This fact distinguishes the case from *Chawla v. Holder*, 599 F.3d 998, 1004 (9th Cir. 2010), which my colleagues cite parenthetically. In *Chawla*, the immigration judge found it implausible that “leave without permission” to attend a rally could constitute a “grave and serious” charge leading to the petitioner’s termination of employment. *Id.* But the immigration judge pointed to “no evidence” about what a “grave and serious charge” is—or, more importantly, that it could be anything other than “leave without permission.” *Id.* Here, by contrast, the immigration judge did point to record evidence that undermined Shi’s credibility, such as her testimony, the country conditions evidence, and her medical history.

“reasonable assumption[s] based in common sense.” *Lalayan*, 4 F.4th at 835; *see also id.* (explaining that the record evidence requirement is “a complement to, not a substitute for, an [immigration judge’s] common sense”). “Just as a witness’s explanation might clarify an issue, his or her failure to provide a persuasive explanation or challenge an assumption can serve as the basis of an implausibility finding.” *Id.* at 836 (citation omitted). As we have made clear, to hold otherwise “would render the REAL ID Act’s distinction between implausibility and inconsistencies meaningless.” *Id.* at 835.

This case presents a straightforward application of that common sense principle. While the record may not compel the conclusion that Shi had knowledge about United States immigration law, or that she had knowledge of the Chinese population-control policy, or that she embellished her claims regarding bed rest, the immigration judge “cited numerous points of evidence in the record, including [Shi’s] testimony, and applied assumptions based in common sense to make [those] findings.” *Id.* at 837. Had my colleagues been the immigration judge, they may have favored Shi’s explanations over those common sense assumptions. But “we cannot supplant the [immigration judge’s] reasonable assumption[s] with any alternative explanation offered on appeal.” *Id.* at 838. Instead, we must uphold an adverse credibility determination in all cases except the rare circumstance where “the evidence not only *supports* [reversal], but *compels*

it.” *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992). By second-guessing the immigration judge’s common sense assumptions here, my colleagues defy the fundamental rule that it is the petitioner—Shi—who had “the burden to satisfy the trier of fact by offering credible and persuasive evidence,” not the other way around. *Yali Wang v. Sessions*, 861 F.3d 1003, 1007–08 (9th Cir. 2017) (concluding immigration judge had “no obligation” to justify her doubt about petitioner’s medical history).

In reviewing this case, the BIA understood the standard of review. The BIA recognized that “we may not overturn a factual finding merely because we would have weighed the evidence differently or decided the facts differently had we been the factfinder.” It recognized that some of the perceived inconsistencies in Shi’s testimony may just be “innocent mistakes,” and that many of the “numerous factors” the immigration judge cited in its decision “might not support an adverse credibility finding” if they were “standing alone.” But despite any skepticism, the BIA affirmed, based on the “great[] deference” afforded to an immigration judge’s adverse credibility determination. My colleagues fail to do the same.

I dissent, not because anything an immigration judge says goes. “[D]eference does not mean blindness,” and we have developed a body of precedent that governs when adverse credibility determinations go beyond the pale. *Vinh Tan Nguyen v. Holder*, 763 F.3d 1022, 1029 (9th Cir. 2014) (citation

omitted). But those doctrines are narrow and extend only to limited factual scenarios—none of which apply here. In all other cases, Congress, the Supreme Court, and our own precedents have all admonished us to respect the highly deferential standard of review governing adverse credibility determinations. Because today my colleagues substitute their own judgment for that of the agency, I respectfully dissent.⁵

⁵ Because I would hold that substantial evidence supports the adverse credibility determination, I do not believe the agency needed to provide Shi with notice-and-opportunity to present corroborating evidence. *See Rodriguez-Ramirez v. Garland*, 11 F.4th 1091, 1094 (9th Cir. 2021).