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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAIHONG HE, Petitioner, v. TODD BLANCHE, Attorney General, Respondent.	No. 21-578 Agency No. A208-075-028 MEMORANDUM*

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

Argued and Submitted June 23, 2026
Honolulu, Hawaii

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

Haihong He, a native and citizen of China, petitions for review of a decision of the Board of Immigration Appeals dismissing her appeal from an immigration judge's order denying her application for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction

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

under 8 U.S.C. § 1252. We grant the petition for review as to asylum and withholding and remand for further proceedings.

Where, as here, the Board upholds an immigration judge's adverse credibility finding, we review "the reasons explicitly identified" by the Board, as well as the portions of the immigration judge's decision addressing those grounds, but we do not review the portions of the immigration judge's decision that the Board "did not identify as 'most significant' and did not otherwise mention." *Iman v. Barr*, 972 F.3d 1058, 1064 (9th Cir. 2020) (quoting *Lai v. Holder*, 773 F.3d 966, 970 (9th Cir. 2014)). 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." *Id.* (quoting *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 748 (9th Cir. 2022)).

While our review is deferential, there are "limits to the deference we owe the agency." *Munyuh v. Garland*, 11 F.4th 750, 758 (9th Cir. 2021). "[D]eference does not mean blindness." *Li v. Ashcroft*, 356 F.3d 1153, 1158 (9th Cir. 2004) (en banc). "The credibility determination must be reasonable and take into consideration the individual circumstances of the applicant." *Munyuh*, 11 F.4th at 758 (internal quotation marks omitted) (quoting *Shrestha v. Holder*, 590 F.3d 1034, 1041 (9th Cir. 2010)). Even under the substantial evidence standard, we must set aside factual findings if "the basis for the findings was insufficient or illogical." *De Leon v. Garland*, 51 F.4th 992, 999 (9th Cir. 2022). And while we owe considerable deference to the agency's factual findings, "no deference is due to 'inference[s] drawn from facts which are uncertain or speculative and which raise only a conjecture or a possibility.'" *Id.* (quoting *California State Water Res. Control Bd. v. FERC*, 43 F.4th 920, 930 (9th Cir. 2022)).

The primary basis for the agency's adverse credibility finding was that He testified about an incident with a police officer that she omitted from a two-page statement accompanying her asylum application. Although omissions of "new allegations that tell a 'much different—and more compelling—story of persecution than [the] initial application'" may support an adverse credibility finding, *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1185 (9th Cir. 2016) (quoting *Zamanov v. Holder*, 649 F.3d 969, 974 (9th Cir. 2011)), the "'mere omission of details'" or a "collateral or ancillary omission that . . . has no tendency to suggest an applicant fabricated her or his claim" is insufficient, *Iman*, 972 F.3d at 1067 (quoting *Lai*, 773 F.3d at 971).

He's omission falls in the latter categories. Her asylum statement detailed that police detained and beat her for attending a house church, that a police officer sexually assaulted her while she was detained, and that she was required to sign a confession pledging to never again attend the house church. She stated that the "police continued to persecute [her]" after she was released, including by requiring her to report back to the police station every week for "ideology classes," and that police came to her house to look for her after she fled to the United States. Her asylum statement thus included the types of facts that we have recognized as sufficient to establish "ongoing" religious persecution in China. *Guo v. Sessions*, 897 F.3d 1208, 1215–16 (9th Cir. 2018). During her testimony, He mentioned that a police officer groped her at one of the weekly "ideology classes." This added detail does not make He's "case for asylum a 'more compelling . . . story of persecution than [the] initial application,'" *Mukulumbutu v. Barr*, 977 F.3d 924, 927 (9th Cir. 2020) (quoting *Silva-Pereira*, 827 F.3d at 1185), and does not undermine her credibility, *Dong v. Garland*, 50 F.4th 1291, 1297 (9th Cir. 2022). "Because [He's] omission, standing alone, cannot support the agency's adverse credibility determination, we need not address whether [s]he gave a reasonable and plausible explanation for the omission or whether the [immigration judge] addressed [her] explanation in a reasoned manner." *Iman*, 972 F.3d at 1069.

Next, the agency relied on He's failure to file a change-of-address form with the immigration court when she temporarily left Honolulu to work in Maui. The agency did not explain how He's failure to file such a form suggested a lack of candor. Government counsel represented at oral argument that He had "a duty to update with her current residence." But the notice to appear informed He that she must provide her "full mailing address," and the immigration judge told her during her initial master calendar hearing, "[i]f ever you change your address, fill in a blue form and mail it to the [c]ourt." The "blue form" the immigration judge referenced is the change-of-address form, Form EOIR-33/IC. U.S. Dep't of Justice, Immigration Court Practice Manual § 11.2(f) (June 10, 2013) ("strongly encourag[ing]" the filing of Form EOIR-33/IC on blue paper), https://perma.cc/Z2VC-Z45E. That form directs a petitioner to file "within five (5) working days of a change in your address or phone number" and explains that the immigration court will only send "official correspondence" to "the address which you provide." Alien's Change of Address Form/Immigration Court, Form No. EOIR-33/IC (rev. July 2015), https://perma.cc/DZY2-HSWA; *see Singh v. Ashcroft*, 393 F.3d 903, 905 (9th Cir. 2004) (explaining that although we are generally "limited in our review to the administrative record," we may nevertheless "exercise the ordinary power of any court to take notice of facts that are beyond dispute"). He testified that she did not file the blue form when she went to Maui because she was "only staying at dormitories" and continued to pay rent for her residence and maintain her mailing address in Honolulu. The agency did not identify any other evidence suggesting that He was attempting to conceal her whereabouts, and the immigration judge did not find that He's responses to questions about this issue were inaccurate or evasive.

The agency also found it implausible that He began attending church in February 2014, obtained a passport in September 2014, and was arrested in November 2014. The immigration judge concluded that this timeline was "so carefully and implausibly constructed that it would appear more likely [He] is here for economic reasons that are unrelated to her fleeing any persecution." The immigration judge cited no record evidence suggesting that He left China for "economic reasons" and did not otherwise explain why the timeline was implausible. But "[a]n implausibility finding based on '[s]peculation and conjecture cannot form the basis of an adverse credibility finding, which must instead be based on substantial evidence.'" *Lalayan v. Garland*, 4 F.4th 822, 833 (9th Cir. 2021) (quoting *Zhi v. Holder*, 751 F.3d 1088, 1093 (9th Cir. 2014)).

Similarly, the agency "found it implausible that the Chinese government would exert such significant effort to target, interrogate, detain, and harm individuals who participated in a small church, especially when the majority of the participants were elderly." But He's account is consistent with the country-conditions evidence cited by the immigration judge, which confirms that Chinese local authorities in some areas "regularly harassed and detained small groups" that met at house churches, "physically assaulted and injured participants," and "imprisoned leaders and worshippers." Nothing in the record suggests that it is implausible that local authorities in He's village would do what the country-conditions evidence says local authorities often do. This, too, does not support the adverse credibility finding. *Lalayan*, 4 F.4th at 833.

Finally, the inconsistencies in He's documentary evidence noted by the agency do not constitute substantial evidence supporting the adverse credibility determination. He submitted a notice from the local government stating that she had missed several weekly check-ins and threatening that an arrest warrant would issue if she did not report to the police station. The agency discounted this evidence because the typewritten notice states that it "is handed to He, Haihong," but He testified that it was handed to a family member. The agency erroneously stated that the document records that it "was given to" or "was handed to" He. But the notice says "is," not "was." It is not uncommon for a legal document to be addressed to a party, *see, e.g.*, Admin Off. of the U.S. Courts, Form No. 440, *Summons in a Civil Action* (2012), even if it may be served on someone else, *see, e.g.*, Fed. R. Civ. P. 4(e)(2). The inconsistency between the testimony and the document was manufactured by the agency, not He. *See Barseghyan v. Garland*, 39 F.4th 1138, 1143 (9th Cir. 2022).

The agency also discounted a hospital diagnosis certificate recording He's injuries, which included some but not all of the injuries He described in her testimony and did not identify any suggested treatment. He provided an explanation for the omissions, but the immigration judge did not address it, instead discounting the document because it "does not look like anything a physician would write" and "[n]o tests were noted, despite head injury." The immigration judge did not "articulate[] on the record" her expertise in the appearance of Chinese medical documents or in the appropriate diagnostic tests for a head injury. *Lin v. Gonzales*, 434 F.3d 1158, 1163 (9th Cir. 2006). Thus, the agency's reasons for rejecting this document rest on "speculation as to what the document should look like and whether the absence of a few details renders a document suspect," which is insufficient to support an adverse credibility finding. *Id.*

The agency's adverse credibility determination is not supported by substantial evidence. We therefore grant the petition and remand to the Board. On remand, the agency should reconsider He's claims for asylum and withholding of removal. He has forfeited any challenge to the denial of her claim for relief under the CAT by failing to address that claim in her opening brief, *see Iraheta-Martinez v. Garland*, 12 F.4th 942, 959 (9th Cir. 2021), so the Board need not consider the claim on remand.

The motion for a stay of removal (Dkt. No. 2) is granted.

PETITION GRANTED; REMANDED.

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Haihong He v. Blanche, No. 21-578
N.R. Smith, Senior Circuit Judge, dissenting:

My colleagues fail to properly apply the standard of review. Evidently, if they were the Immigration Judge, my colleagues would have found Petitioner Haihong He ("Petitioner") credible. However, we are not Immigration Judges. We "review adverse credibility determinations for substantial evidence." *Ani v. Bondi*, 155 F.4th 1118, 1126 (9th Cir. 2025). "Under the substantial evidence standard, administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." *Id*. (citation omitted). Because a reasonable adjudicator could have found Petitioner not credible, I respectfully dissent.

The agency concluded that Petitioner was not credible based on an omission, the implausibility of Petitioner's testimony, Petitioner's failure to follow reporting requirements, and Petitioner's failure to corroborate. My colleagues reject all the agency's conclusions. I highlight four of my colleagues' failures to follow the standard of review because those findings are sufficient to support the adverse credibility finding. *See Ani*, 155 F.4th at 1127.

<u>Omission of evidence:</u> Petitioner testified at the merits hearing that she was sexually assaulted on two occasions by the same police officer but did not mention the second sexual assault in her affidavit. The omission supports the adverse credibility finding. By statute, the agency "may base a credibility determination on

. . . the consistency between the applicant's or witness's written and oral statements . . . without regard to whether an inconsistency . . . goes to the heart of the applicant's claim." 8 U.S.C. § 1158(b)(1)(B)(iii).

My colleagues do not dispute the agency's finding that Petitioner's testimony and affidavit were inconsistent, nor could they credibly do so. Petitioner testified on direct examination about a sexual assault she did not mention in her affidavit. Instead, my colleagues try to minimize the importance of Petitioner's omission because they conclude that the second sexual assault does not make Petitioner's application more compelling. That is wrong. A reasonable adjudicator could find that the second sexual assault made the application more compelling. As the agency explained, "[t]he harm [Petitioner] claims to have experienced is central to her claim for relief."

It is well established that "[p]ersecution is an extreme concept that means something considerably more than discrimination or harassment" and that findings of past persecution are "heavily fact-dependent" and "not reducible to a set formula." *Singh v. Blanche*, 176 F.4th 1139, 1145 (9th Cir. 2026) (citation omitted). Because an arrest, interrogation, detainment, and interruption of religious practice by itself may not rise to the level of persecution, *see Gu v. Gonzales*, 454 F.3d 1014, 1020–21 (9th Cir. 2006), *Nagoulko v. I.N.S.*, 333 F.3d 1012, 1016 (9th Cir. 2003), Petitioner added an allegation that she was sexually assaulted not once but twice by the same police officer. Being sexually assaulted on two separate occasions demonstrates a pattern rather than an isolated incident. It strains credulity to conclude that adding a second sexual assault allegation did not make Petitioner's application more compelling. *See Lapadat v. Bondi*, 145 F.4th 942, 952 (9th Cir. 2025) (noting that prior cases have looked at patterns of abuse).[1]

Petitioner's unpersuasive explanation for the omission. Petitioner's explanation for her omission was she "just wrote down what basically happened, and the assistant told [her] not to write too much details." The agency found that "[t]his makes little sense," because Petitioner bears the "burden to establish eligibility for relief and [Petitioner] is reasonably expected to include all incidents of harm."

The agency was not required to accept Petitioner's explanation for her omission and its rejection of Petitioner's explanation supports the adverse credibility finding. *See Dong v. Garland*, 50 F.4th 1291, 1298 (9th Cir. 2022). "Indeed, even if [Petitioner's] interpretation were reasonable, the [agency was] not

[1] My colleagues ignore that Petitioner brought a Convention Against Torture (CAT) claim. "[S]exual assault may constitute torture." *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020). We have also considered the "frequency" of "abuses by police" when addressing CAT claims. *Latter-Singh v. Holder*, 668 F.3d 1156, 1164 (9th Cir. 2012). Information about a second sexual assault by the police therefore made Petitioner's CAT claim more compelling.

compelled to accept her explanation for the discrepancy." *Li v. Garland*, 13 F.4th 954, 961 (9th Cir. 2021). A reasonable adjudicator could conclude that Petitioner's explanation made "little sense" and was "unpersuasive." Petitioner's counsel, who did not represent Petitioner at the time of her affidavit, conceded at oral argument that his office would not have told Petitioner "not to write too much details." Thus, "the record does not compel the finding that the [agency's] unwillingness to believe this explanation, in light of the importance of the omitted incidents to [Petitioner's] asylum claim, was erroneous." *Zamanov v. Holder*, 649 F.3d 969, 974 (9th Cir. 2011).

My colleagues argue that they need not address the agency's rejection of Petitioner's explanation because they are not persuaded by the significance of the "omission, standing alone." That is an error. We must consider the "totality of the circumstances." 8 U.S.C. § 1158(b)(1)(B)(iii); *see also Ani*, 155 F.4th at 1122 (noting that "our review of an adverse credibility finding 'will always require assessing the totality of the circumstances'" (citation omitted)). Even if the omission were "a relatively insignificant event," we have found that "it was reasonable for the [agency] to conclude that [an] omission . . . together with [a] questionable explanation for that omission, undermined [a petitioner's] credibility." *Dong*, 50 F.4th at 1297-98.

<u>Failure to follow court orders:</u> Petitioner's failure to abide by the Immigration Judge's order concerning reporting where she lived also supports the adverse credibility finding.[2] In December 2017, after Petitioner testified that her address was in Oahu, the Immigration Judge explained, "[i]f ever you change your address, fill in a blue form and mail it to the Court within five business days." In August 2018, Petitioner changed her story, and testified that she was living in Maui from October 2017 until July 2018 "because [her] job was there" and returned to Oahu in July 2018. The Immigration Judge challenged Petitioner regarding why she did not "keep the Court appraised of where [she] were living through this process[.]" Petitioner replied that she did not "want to have many addresses that [she] would miss important documents from the Court. So, [she] had or have kept that address all along."[3] The agency found that her explanation made Petitioner not credible, because Petitioner "was not candid about her failure to update the court . . . of her changes in residence." Substantial evidence supports this finding. A reasonable adjudicator could conclude that Petitioner moved between Oahu and

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[2] Petitioner admitted during the merits hearing that as a condition of her release, she agreed that she "would not change [her] place of residence without written permission from immigration officers." Nevertheless, she chose not to update the agency of her change in residence and provided an unpersuasive explanation for her decision.

[3] Petitioner's counsel told the Immigration Judge that she "believe[d]" Petitioner changed her address in Oahu and consequently updated the asylum application. The updated application's list of addresses contradicts the original list but does not appear to list a new Oahu address.

Maui and did not inform the court, thereby failing to follow the Immigration Judge's instructions.

My colleagues fault the agency for not explaining why Petitioner's failure to follow a court order suggests a lack of candor, and overlook that "a reviewing court must 'uphold' even 'a decision of less than ideal clarity if the agency's path may reasonably be discerned.'" *Garland v. Ming Dai*, 593 U.S. 357, 369 (2021) (citation omitted). We can discern that the agency found Petitioner's explanation untruthful and her failure to be forthright indicated a lack of candor.

There is no merit to my colleagues' view that the Immigration Judge really meant that Petitioner only had to notify the Immigration Judge if she stopped paying rent at the address she provided. In support of this interpretation, my colleagues cite the notice to appear, but there is no indication that the Immigration Judge incorporated that document into her instruction. Next, my colleagues cite the agency's change of address form, but even assuming that the Immigration Judge incorporated that document, the form states that the disclosure of information is "mandatory" and that "[i]f you move or change your phone number, the law requires you to file this Change of Address Form with the Immigration Court."

<u>Failure to corroborate:</u> The agency found that the documents Petitioner submitted were of "lowered probative value" and questioned Petitioner's failure to

produce readily available evidence. Of particular note, the agency found Petitioner's hospital diagnosis certificate was suspect and did not corroborate the extent of her injuries. The record supports the agency's decision to discount the hospital diagnosis certificate because it "does not denote all of the injuries [Petitioner] claimed she sustained or describe the treatment she received." The agency may "point to some other obvious discrepancy or indicia that would allow one to discredit the document based on logic or common sense." *Lin v. Gonzales*, 434 F.3d 1158, 1164 (9th Cir. 2006). Here, the agency used evidence of widespread document fraud in China and common sense to ponder why the hospital diagnosis certificate "does not list any suggested treatment or mention the injuries that [Petitioner] sustained to her back and chest." That question is different in kind from the impermissible speculation in *Lin* that a forced sterilization document would contain a resident identification number and a birth date, or that a marriage certificate would include identity numbers. *See id*. at 1162–66. It is reasonable to expect a medical report to include an opinion on treatment when there is a place in the report for such an opinion. It is also reasonable to expect that a medical report that lists injuries would include the injuries that a petitioner claims they suffered.

Bottom line. There is ample evidence upon which a reasonable adjudicator could have relied to make an adverse credibility finding. We therefore should have denied the petition.[4]

[4] My colleagues remand to the agency to reconsider Petitioner's claims for asylum and withholding of removal without further explanation. To the extent that my colleagues are suggesting that the agency cannot revisit Petitioner's credibility, I disagree. It is not the court's role to determine a petitioner's credibility. *See Ming Dai*, 593 U.S. at 373.