

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSE GEOVANI RODRIGUEZ-
RAMIREZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,
Respondent.

No. 19-70506

Agency No.
A208-894-008

OPINION

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

Submitted April 15, 2021 *
Pasadena, California

Filed September 1, 2021

Before: Richard A. Paez and Lawrence VanDyke, Circuit
Judges, and Sharon L. Gleason,** District Judge.

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

** The Honorable Sharon L. Gleason, United States District Judge for the District of Alaska, sitting by designation.

Per Curiam Opinion;
Concurrence by Judge VanDyke

SUMMARY***

Immigration

Denying Jose Rodriguez-Ramirez’s petition for review of a decision of the Board of Immigration Appeals, the panel held that substantial evidence supported the Board’s denial of asylum and withholding of removal on adverse credibility grounds.

The panel explained that the agency was permitted to afford substantial weight to inconsistencies that bore directly on Rodriguez-Ramirez’s claim of persecution. First, Rodriguez-Ramirez testified that he was threatened by gang members outside his daughter’s school in February 2016, but the report he provided from a prosecutor twice stated the threats occurred in January 2016, and the IJ found that Rodriguez-Ramirez did not have a convincing explanation for the discrepancy. The panel explained that an IJ may rely upon an inconsistency in a “crucial date” concerning the very event upon which a petitioner predicated his claim for asylum.

Second, Rodriguez-Ramirez testified on direct examination that the gang members showed him a weapon when they made the threat, yet he did not provide this

*** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

information to the prosecutor or in his written asylum application. The panel explained that although omissions are less probative of credibility than inconsistencies created by direct contradictions in evidence and testimony, this omission concerned the events and circumstances that Rodriguez-Ramirez experienced directly, and the additional information was provided on direct, not cross, examination. The panel wrote that in the context of this case, in which this specific event prompted Rodriguez-Ramirez to flee to the United States, the IJ was allowed to afford substantial weight to discrepancies associated with the threat and the documentation Rodriguez-Ramirez personally procured and then submitted to the IJ.

The panel wrote that the adverse credibility determination was also supported by the IJ's demeanor findings. The panel explained that the IJ is in the best position to consider a petitioner's demeanor, candor, and responsiveness. The panel concluded that the IJ did not err in relying on Rodriguez-Ramirez's evasive and unresponsive demeanor while testifying after providing examples of his evasiveness.

Considering the totality of the circumstances, the panel concluded that these grounds were sufficient to conclude that substantial evidence supported the adverse credibility determination. The panel therefore did not address the other grounds relied upon by the BIA and IJ. The panel noted that although the BIA and IJ also pointed to a lack of corroborating evidence, the IJ was not required to give Rodriguez-Ramirez notice and an opportunity to provide additional corroborating evidence because substantial evidence supported the adverse credibility determination.

Judge VanDyke fully concurred with the denial of Rodriguez-Ramirez’s petition for review and joined the majority *per curiam* opinion. Judge VanDyke wrote separately, however, to explain in more detail how the highly deferential standard of review—which is especially deferential to adverse credibility determinations—dictates the denial of Rodriguez-Ramirez’s petition. Judge VanDyke also addressed the intersection between adverse credibility determinations and the agency’s reliance on Rodriguez-Ramirez’s evasiveness, demeanor, and lack of corroborating evidence.

Judge VanDyke wrote that administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary. Thus, this court must deny the petition unless the petitioner has presented evidence so compelling that no reasonable factfinder could find that he was not credible. Judge VanDyke wrote that layered on top of this already extremely deferential standard of review, Congress further significantly restricted review of adverse credibility determinations with the passage of the Real ID Act. Under the Act, there is no presumption that a petitioner is credible, and only the most extraordinary circumstances will justify overturning an adverse credibility determination. The Act allows the IJ to base an adverse credibility determination on any relevant factor that, considered in light of the totality of the circumstances, can reasonably be said to have a bearing on a petitioner’s veracity, and when inconsistencies that weaken a claim for asylum are accompanied by other indications of dishonesty—such as a pattern of clear and pervasive inconsistency or contradiction—an adverse credibility determination may be supported by substantial evidence. Judge VanDyke concluded that under the appropriate standard of review, the agency’s adverse

credibility determination is easily supported by substantial evidence given Rodriguez-Ramirez's: (1) discrepancies surrounding the District Attorney's report, (2) embellished testimony, (3) evasive demeanor, and (4) failure to provide corroborative evidence. Judge VanDyke wrote that even if reasonable minds might disagree, there is nothing "most extraordinary" about the agency's determination that would compel a contrary conclusion.

COUNSEL

Areg Kazaryan, Glendale, California, for Petitioner.

Jennifer P. Levings, Senior Litigation Counsel; Erik R. Quick, Trial Attorney; Office of Immigration Litigation, Civil Division, United States Department of Justice, Washington, D.C.; for Respondent.

OPINION

PER CURIAM:

Jose Geovani Rodriguez-Ramirez, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals’s (“BIA”) dismissal of his appeal of an immigration judge’s (“IJ”) denial of his application for asylum and withholding of removal. Where, as here, the BIA partially adopts the IJ’s decision but contributes its own reasoning, we review the BIA’s decision along with the IJ’s decision, to the extent the BIA adopted it. *Sinotes-Cruz v. Gonzales*, 468 F.3d 1190, 1194 (9th Cir. 2006); *Zhi v. Holder*, 751 F.3d 1088, 1091 (9th Cir. 2014). We review the agency’s factual findings for substantial evidence. *Mukulumbutu v. Barr*, 977 F.3d 924, 925 (9th Cir. 2020). We have jurisdiction under 8 U.S.C. § 1252(a), and we deny the petition.

The IJ denied Rodriguez-Ramirez’s application on the basis that he was not credible. On appeal to the BIA, the BIA affirmed. Substantial evidence supports the agency’s adverse credibility determination.

The BIA and IJ were permitted to afford substantial weight to inconsistencies that “bear[] directly on [Rodriguez-Ramirez]’s claim of persecution.” *Manes v. Sessions*, 875 F.3d 1261, 1264 (9th Cir. 2017) (per curiam). Rodriguez-Ramirez testified that he fled to the United States after gang members threatened him outside his daughter’s school. He testified that he reported this threat to the local prosecutor the next day, and that the prosecutor prepared a report based on the information Rodriguez-Ramirez provided. Rodriguez-Ramirez also testified that he fled to the United States just days after making the report. Rodriguez-Ramirez did not provide any other corroborating

evidence concerning the threats he received. Among other matters, the IJ relied on two inconsistencies concerning the threat and the report, which were supported by the record.

First, despite Rodriguez-Ramirez's testimony in October 2017 that this threat occurred in February 2016, the report he provided from the prosecutor twice stated, on different pages, that the threats occurred in January 2016, and the IJ found that Rodriguez-Ramirez did not have a convincing explanation for the discrepancy. We have recognized that an IJ may rely upon an inconsistency in a "crucial date" concerning "the very event upon which [a petitioner] predicated his claim for asylum." *Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007).

Second, Rodriguez-Ramirez testified on direct examination that the gang members showed him a weapon when they made the threat. He did not provide this information to the prosecutor or in his written asylum application. Although "omissions are less probative of credibility than inconsistencies created by direct contradictions in evidence and testimony," this omission concerned the "events and circumstances that . . . [Rodriguez-Ramirez] experienced directly," and the additional information was provided on direct, not cross, examination. *Lai v. Holder*, 773 F.3d 966, 971, 973–74 (9th Cir. 2014); *see also Iman v. Barr*, 972 F.3d 1058, 1067–69 (9th Cir. 2020). In the context of this case, in which this specific event prompted Rodriguez-Ramirez to flee to the United States, the IJ was allowed to afford substantial weight to discrepancies associated with the threat and the documentation Rodriguez-Ramirez personally procured and then submitted to the IJ. *See Manes*, 875 F.3d at 1264.

The adverse credibility determination is also supported by the IJ's demeanor findings. We have previously

explained that the IJ is in the best position to consider a petitioner’s demeanor, candor, and responsiveness. *Shrestha v. Holder*, 590 F.3d 1034, 1041 (9th Cir. 2010). The BIA and IJ did not err in relying on Rodriguez-Ramirez’s evasive and unresponsive demeanor while testifying after providing examples of his evasiveness. *See Jin v. Holder*, 748 F.3d 959, 965 (9th Cir. 2014) (requiring the IJ to “identify the instances where the petitioner is non-responsive”).

Considering the totality of the circumstances, *see* 8 U.S.C. § 1158(b)(1)(B)(iii); *Shrestha*, 590 F.3d at 1040, the above grounds are sufficient to conclude that substantial evidence supports the adverse credibility determination. Therefore, we need not address the other grounds relied upon by the BIA and IJ. And although the BIA and IJ also pointed to a lack of corroborating evidence, “the IJ was not required to give [Rodriguez-Ramirez] notice and an opportunity to provide additional corroborating evidence” because substantial evidence supports the adverse credibility determination. *Mukulumbutu*, 977 F.3d at 927; *see also Wang v. Sessions*, 861 F.3d 1003, 1008–09 (9th Cir. 2017). Substantial evidence also supports the BIA’s conclusion that without credible testimony, Rodriguez-Ramirez failed to establish eligibility for asylum or withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.

VANDYKE, Circuit Judge, concurring:

I fully concur with the denial of Petitioner Rodriguez-Ramirez’s petition for review and join the majority per curiam opinion. I write separately, however, to explain in more detail how the highly deferential standard of review—which is especially deferential to adverse credibility determinations—dictates the denial of Rodriguez-Ramirez’s petition. I also address the intersection between adverse credibility determinations and the agency’s reliance on Rodriguez-Ramirez’s evasiveness, demeanor, and lack of corroborating evidence.

I.

In March 2016, Rodriguez-Ramirez, a native and citizen of El Salvador, unlawfully entered the United States. Nearly a year later, he applied for asylum, withholding of removal, and relief under the Convention Against Torture (CAT). Rodriguez-Ramirez later testified before the IJ, where he alleged that Salvadoran gangs extorted him for money due to his status as a small business owner. But some of his details didn’t add up, and, as the IJ observed, he proffered several evasive and unresponsive answers.

At the outset, Rodriguez-Ramirez provided inconsistent information about his past residences. In his asylum application, Rodriguez-Ramirez wrote that he attended a university in the El Salvador department of La Libertad from 2000 to 2005. But before the IJ, Rodriguez-Ramirez testified that he only lived in La Libertad until 1999. When questioned about the discrepancy, Rodriguez-Ramirez explained that he listed the La Libertad address while attending a university “just in case there were anything they were going to send by mail” and that “[i]t was the address of [his] mom’s.” He further explained that he lived in

“[Z]arago[z]a for a time,” (a city in La Libertad), but then moments later stated that he did *not* live in La Libertad after he was 18 because “he lived in San Salvador” (a department neighboring La Libertad). After Rodriguez-Ramirez provided several apparently contradictory answers without further explanation, the IJ observed that “[t]he conflict is clear from the [asylum application].”

Rodriguez-Ramirez also added new details of harassment for the first time while testifying. In his asylum application, Rodriguez-Ramirez listed a previous job he held as a sales supervisor without providing any details. But when cross-examined before the IJ, Rodriguez-Ramirez stated that during this job, he was “frequently . . . daily assaulted or threatened” and “kicked out of the area [he] was selling in.” When asked if there was a reason that he omitted details of continued assault in his asylum application—the very document instructing applicants to list such incidents—Rodriguez-Ramirez replied, “[n]o. There’s no reason” because he “felt like . . . it’s common knowledge everywhere the social situation there.”

Rodriguez-Ramirez also conceded that he could not provide evidence of the documented threats he received while operating his business in El Salvador. He testified that, beginning in March 2015, he owned and operated a fast-food restaurant where the gangs extorted him for money. He explained that he would regularly receive threatening notes at his house reminding him to pay the extortion demands. But then he said that he didn’t know what he did with those notes, and he didn’t report the extortion demands to the authorities. And when asked if “there [are] any records, any documentation that you have about what you say was the fast[-]food business,” he replied “[j]ust a type of lease

contract.” But he failed to include this lease in his application, despite submitting numerous other documents.

Finally, Rodriguez-Ramirez provided inconsistent testimony about the very encounter that instigated his departure from El Salvador. In November 2015, after months of allegedly receiving threatening notes and in-person visits at his fast-food restaurant, Rodriguez-Ramirez closed shop. He also moved and changed his phone number to avoid future contact with the gangs. But in February 2016 (or so he repeatedly claimed), he received a threatening note reminding him about his “debts.” Like the previous notes, he neither saved this note nor reported it to the police. Around that same time, he claimed that several people approached him at his daughter’s school, showed him a gun, and demanded payment. The next day, Rodriguez-Ramirez reported this incident directly to the District Attorney and left El Salvador shortly thereafter.

But according to Rodriguez-Ramirez, it was the District Attorney’s office who, after taking the time to complete a report, told him that “they couldn’t do anything” and that he should “find [his] own way, make [his] own choice, whether [he] was going to move from that place, leave the country, [he] just had to find a way.” He later reiterated that the District Attorney’s office stressed “that it was [his] choice and it was up to [him] to either move away from the place or flee the country or find [his] own way.”

He also claimed that the District Attorney’s office provided him with a copy of his report, but then he couldn’t recall if he brought it with him to the United States or if he received a copy of it by mail. In response to his equivocation, the IJ exasperatingly exclaimed that “I’m not understanding why you can’t remember the basic question of whether that was mailed to you in the United States or

whether you brought it along with you. This is an official document. I think you would remember that.” Rodriguez-Ramirez immediately replied, “[i]f I’m not mistaken I remember that I brought those documents with me because the day I left from El Salvador I went to the DA’s office.” He continued with his sudden recall: “Now I remember that that was the last [official] thing I did . . . before leaving. I went [to the District Attorney’s office] around 11:00 in the morning.”

More red flags surrounded this report. The report twice stated that the school incident occurred in *January* 2016—not February, as he had repeatedly testified. When asked about the discrepancy, Rodriguez-Ramirez only suggested that “[m]aybe there was a mistake on the page” and “at no time . . . [did] I focus[] so much on the dates.” And when asked why the report contains no mention of him being shown a weapon at the school—which was one of the key facts that drove him to the District Attorney’s office in the first place—he explained “that[] [it’s] very common and everyone knows about weapons there and then they want to—if I would have mentioned about weapons they would have asked me what type of weapons and since I don’t know about guns”

After Rodriguez-Ramirez’s testimony concluded, the IJ found him not credible. The IJ first found that Rodriguez-Ramirez was “extremely evasive as a witness,” noting that he “would not respond to direct questions, even concerning something so simple a matter as whether the University or technical college that he had attended was located in La Libertad.” The IJ also found that Rodriguez-Ramirez’s claims “suffer[ed] from a lack of corroborating evidence,” but noted that he was “not denying the . . . application due to a lack of corroboration.” Instead, the IJ found that “the

absence of corroboration, and [Rodriguez-Ramirez]’s careless testimony and faulty memory about the existence of corroborative evidence, reflects adversely on his credibility.” The IJ also relied on the discrepancies surrounding Rodriguez-Ramirez’s report to the District Attorney, including his inability to recall how he obtained the document, the inconsistent dates, the report’s omission of the weapon brandishing during the school incident, and the implausibility of the District Attorney’s office taking the time to fill out a report while simultaneously advising Rodriguez-Ramirez that nothing could be done and that he should leave the country. Given the adverse credibility finding, the IJ denied Rodriguez-Ramirez’s claims for asylum, withholding of removal, and protection under CAT.

The BIA affirmed the IJ and dismissed Rodriguez-Ramirez’s appeal. It first concluded that the IJ’s adverse credibility determination was not clearly erroneous, and proceeded to cite several specific and cogent reasons supporting that determination, including Rodriguez-Ramirez’s: (1) lack of evidence pertaining to his fast-food restaurant or extortion notes, (2) inconsistent dates described in Rodriguez-Ramirez’s testimony and the District Attorney’s report, (3) inability to recall simple details, such as whether he brought the report with him or received a copy of it in the mail, (4) key omissions pertaining to the weapon brandishing during the school incident and the mistreatment he experienced at prior jobs, and (5) contradictory testimony regarding his residence in La Libertad. The BIA also relied on the IJ’s demeanor findings, as well as other reasons “articulated by the [IJ] in his decision.”

Rodriguez-Ramirez petitioned this court for review, challenging the agency’s determinations pertaining to his adverse credibility and lack of corroborating evidence.

II.

Rodriguez-Ramirez’s insufficient, varying, and at times contradictory testimony sufficiently supported the agency’s adverse credibility determination—especially given the extremely high deferential standard of review for adverse credibility determinations. “We review factual findings, including adverse credibility determinations, for substantial evidence.” *Mukulumbutu v. Barr*, 977 F.3d 924, 925 (9th Cir. 2020). “The standard of review is extremely deferential: administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” *Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003) (citation and internal quotation marks omitted). “[T]his court must deny [the] petition unless [the petitioner] has presented evidence so compelling that no reasonable factfinder could find that he was not credible.” *Id.* (citation and internal quotation marks omitted).¹

Layered on top of this already extremely deferential standard of review, Congress further significantly restricted our review of adverse credibility determinations with the passage of the Real ID Act (Act). *See Kaur v. Gonzales*, 418 F.3d 1061, 1064 n.1 (9th Cir. 2005); *see also Jibril v.*

¹ *See also Don v. Gonzalez*, 476 F.3d 738, 745 (9th Cir. 2007) (“Although a reasonable factfinder *could* have found Petitioner credible, no such finding is *compelled* by the evidence. Because a reasonable factfinder could have reached this result, we must uphold the IJ’s decision.”); *Singh v. INS*, 134 F.3d 962, 969 n.14 (9th Cir. 1998) (“[W]e may not reweigh the evidence We merely determine whether the evidence *compels* such a conclusion.”); *Aruta v. INS*, 80 F.3d 1389, 1393 (9th Cir. 1996) (“[W]e do not reverse the BIA simply because we disagree with its evaluation of the facts, but only if we conclude that the BIA’s evaluation is not supported by substantial evidence.” (citation and internal quotation marks omitted)).

Gonzales, 423 F.3d 1129, 1138 n.1 (9th Cir. 2005) (granting a petition while noting that, had the Act been in effect at the time of that decision, the panel “would be obliged to deny [it]”—even though the IJ in that case relied on inconsistencies in arguably minor facts, implausible accounts, and evasive demeanor that was not specifically reflected in the record). “Under the [Act], there is no presumption that [a petitioner] is credible,” and “only the most extraordinary circumstances will justify overturning an adverse credibility determination.” *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1185 (9th Cir. 2016) (citations and internal brackets removed). The Act provides that:

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant’s . . . account, the consistency between the applicant’s . . . written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim, or any other relevant factor. There is no presumption of credibility

8 U.S.C. § 1158(b)(1)(B)(iii). In short, the Act allows the IJ to “base an adverse credibility determination on *any* relevant factor that, considered in light of the totality of the circumstances, can reasonably be said to have a bearing on a petitioner’s veracity.” *Ren v. Holder*, 648 F.3d 1079, 1084 (9th Cir. 2011) (emphasis added) (citation and internal quotation marks omitted). So “when inconsistencies that weaken a claim for asylum are accompanied by other indications of dishonesty—such as a pattern of clear and pervasive inconsistency or contradiction—an adverse credibility determination may be supported by substantial evidence.” *Kaur*, 418 F.3d at 1067. Moreover, “an IJ must be allowed to exercise common sense in rejecting a petitioner’s testimony even if the IJ cannot point to specific, contrary evidence in the record to refute it.” *Jibril*, 423 F.3d at 1135.

Under the appropriate standard of review, the agency’s adverse credibility determination is easily supported by substantial evidence given Rodriguez-Ramirez’s: (1) discrepancies surrounding the District Attorney’s report, (2) embellished testimony, (3) evasive demeanor, and (4) failure to provide corroborative evidence. Rodriguez-Ramirez has thus necessarily failed to meet the high threshold of showing an “extraordinary circumstance[]” necessary to overturn the agency’s adverse credibility determination. *Silva-Pereira*, 827 F.3d at 1185 (citation omitted).

1. *The Discrepancies Surrounding the District Attorney’s Report Reasonably Support the Agency’s Adverse Credibility Determination.*

First, substantial evidence supports the agency’s adverse credibility determination given the numerous discrepancies surrounding the District Attorney’s report, which included

contradictory dates as to when the school incident occurred, the omission of the weapon brandishing during that incident (although Rodriguez-Ramirez brought up the gang's use of weapons in threatening him at his daughter's school for the first time in his merits hearing) and Rodriguez-Ramirez's inability to recall how he obtained the report. The agency relied on these discrepancies for good reason: the report documents the only time Rodriguez-Ramirez says he sought help from Salvadoran authorities, and it concerned the preeminent incident that he says caused him to flee the country. The circumstances surrounding the report are therefore central to his claims, which bolsters the reasonableness of the agency's adverse credibility determination. Each one of these inconsistencies or embellishments independently casts doubt on Rodriguez-Ramirez's story. *See* 8 U.S.C. § 1158(b)(1)(B)(iii); *Don*, 476 F.3d at 741–43 (inconsistency regarding a “crucial date” went to the heart of a claim); *Iman v. Barr*, 972 F.3d 1058, 1068 (9th Cir. 2020) (“[O]missions are probative of credibility to the extent that later disclosures, if credited, would bolster an earlier, and typically weaker, asylum application.”). The agency was not unreasonable in concluding that, taken together, the discrepancies tip the scale against Rodriguez-Ramirez's credibility. Based on the record, substantial evidence supports the agency's adverse credibility determination given the discrepancies surrounding the report.

2. *Rodriguez-Ramirez's Embellished Testimony Reasonably Supports the Agency's Adverse Credibility Determination.*

Even if the discrepancies surrounding the report did not alone provide enough support for the agency's adverse credibility finding, the agency also reasonably relied on

Rodriguez-Ramirez's other embellished testimony. Rodriguez-Ramirez testified that he was harassed at a prior job, but he made no reference to this harassment in his asylum application. Considering that Rodriguez-Ramirez claims he left his country to avoid ongoing harassment—and the fact that his application specifically called for such information—omitting any mention of ongoing harassment at a prior job, but then later relying on such claimed harassment during his testimony, reasonably suggests that Rodriguez-Ramirez embellished his testimony during his merits hearing in an attempt to further support his claims.

The fact that Rodriguez-Ramirez embellished his testimony by merely adding key information previously omitted (as opposed to contradictory testimony), or that his embellishment occurred during cross-examination, is of no moment. Embellishment by its nature usually isn't contradictory; when it is, it means you just got caught in a bald-faced lie, not that you were merely embellishing. And there is no reason that a witness wouldn't be just as tempted to embellish during cross-examination; indeed, perhaps more so, since the witness is usually under more pressure under cross-examination. Ultimately, Rodriguez-Ramirez, under the pressure of cross-examination, tried to bolster his claim that he was harassed by bringing up new instances of harassment that he hadn't mentioned before. That is the paradigm of embellishment, which reflects adversely on credibility—not because it is necessarily inconsistent with anything the petitioner said before, but because it can appear to the factfinder that the petitioner is making things up to bolster his claim. And if the petitioner is willing to do that, then he isn't trustworthy. Nothing in the record compels the conclusion that the agency wrongly relied on Rodriguez-Ramirez's embellished testimony about harassment as supporting an adverse credibility finding.

3. Rodriguez-Ramirez’s Evasive Demeanor Reasonably Supports the IJ’s Adverse Credibility Finding.

In addition to the numerous discrepancies already discussed, Rodriguez-Ramirez’s evasive demeanor also supports the agency’s determination. The IJ found Rodriguez-Ramirez to be “extremely evasive as a witness,” and findings pertaining to a petitioner’s demeanor are afforded special deference. *See Singh-Kaur v. INS*, 183 F.3d 1147, 1151 (9th Cir. 1999) (“We give ‘special deference’ to a credibility determination that is based on demeanor.” (citation omitted)). The IJ observed that Rodriguez-Ramirez would not squarely respond to direct questions about the location of his university, or why his asylum application did not include details of harassment from his prior job.

Simply because the record reflects that Rodriguez-Ramirez did, in fact, eventually provide some answer to the questions does not undermine the IJ’s finding of evasiveness. The IJ’s demeanor findings are afforded special deference precisely because they are uniquely based on in-person observations that often, and understandably, cannot be captured entirely by the record. *Qui v. Barr*, 944 F.3d 837, 843 (9th Cir. 2019) (“The reason why we give special deference to an IJ’s credibility determination is that the IJ himself or herself had the opportunity to evaluate the petitioner’s behavior in person.” (emphasis omitted)). If, as a court reviewing the cold record, we rigidly required objective indicia of demeanor findings, it would be directly at odds with the very reason we give special deference to such findings. *See* 8 U.S.C. § 1158(b)(1)(B)(iii); *Jibril*, 423 F.3d at 1137 (“Few, if any, of these ephemeral indicia of credibility can be conveyed by a paper record of the proceedings and it would be extraordinary for a reviewing court to substitute its second-hand impression of the

petitioner's demeanor, candor, or responsiveness for that of the IJ."). Here, the record shows that the colloquy regarding the location of Rodriguez-Ramirez's university was lengthy and convoluted, with the IJ concluding that "the conflict is clear."

The IJ's conclusion that Rodriguez-Ramirez was evasive as a witness is especially important in conjunction with the IJ's other bases for finding him not credible—his embellishment and inconsistencies. We know by common experience that, when we see and hear someone change their story or suddenly recall a supposedly forgotten fact, it is precisely their demeanor during those moments that we find most revealing as to whether they were being dishonest—not merely their words that end up in a transcript. Here, the IJ obviously came away with the distinct impression that Rodriguez-Ramirez was not an honest witness based, no doubt, on the interplay of both what he said (which we can read in the transcript), and how he said it (which we can't). Again, there is nothing in the record that compels the conclusion that the IJ's impression was wrong. He was there; we were not.

Moreover, in his convoluted testimony, Rodriguez-Ramirez apparently contradicted his asylum application by providing inconsistent dates as to when he left the area where his university was located. Rodriguez-Ramirez provides no explanation for these inconsistencies in his petition. And while one could argue that someone can live and attend a university in two different cities, Rodriguez-Ramirez's inability to proffer any explanation only strengthens the IJ's concerns about Rodriguez-Ramirez's evasiveness when questioned on this topic. Again, sometimes a witness who is lying misses the simple and obvious answer to a direct question because he is so worried about being caught in an

inconsistency that every answer he gives is evasive, vague, or convoluted. Here, the IJ and DHS's attorney were both obviously confused about how Rodriguez-Ramirez could have moved away from La Libertad and yet still attended school there, and so questioned him at length about it. But he never gave them a straight answer for this facial discrepancy, and it wasn't because he wasn't given an opportunity.

4. The Lack of Corroborative Evidence Reasonably Supports the Agency's Adverse Credibility Determination.

Finally, the agency's adverse credibility determination is confirmed by the lack of corroborating evidence. In affirming the IJ, the BIA noted Rodriguez-Ramirez's inability to provide any documentation of his fast-food business or the threatening notes he received. There is nothing impermissible about the agency pointing to the lack of corroborating evidence as additional support for an adverse credibility determination. *See Mukulumbutu*, 977 F.3d at 927 ("Because the IJ found [the petitioner's] testimony not credible, the IJ was not required to give [the petitioner] notice and an opportunity to provide additional corroborating evidence."); *Wang v. Sessions*, 861 F.3d 1003, 1005 (9th Cir. 2017) ("Because the IJ's adverse credibility determination was supported by substantial evidence, and because the IJ had no obligation to give [the petitioner] an opportunity to provide additional evidence, we deny the petition."); 8 U.S.C. § 1158(b)(1)(B)(ii) ("Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided"); *Ren*, 648 F.3d at 1091 n.11. This comports with the text of the Act, which allows the agency to evaluate the totality of the circumstances and

“all relevant factors”—which would logically include whether the petitioner’s eyebrow-raising testimony is otherwise substantiated by other evidence. *See* 8 U.S.C. § 1158(b)(1)(B)(iii). And for all the reasons discussed above, the totality of the circumstances in this case shows that substantial evidence supports the agency’s adverse credibility determination, without even taking the lack of corroboration into account. The agency reasonably considered the lack of corroborating evidence, which further supported its adverse credibility determination.

III.

Considering the totality of the circumstances, substantial evidence supports the agency’s adverse credibility determination. Even if reasonable minds might disagree, there is nothing “most extraordinary” about the agency’s determination that would compel a contrary conclusion. *See Jibril*, 423 F.3d at 1138 n.1; *Don*, 476 F.3d at 745. Under the extremely deferential standard of review we apply, I concur in the denial of Rodriguez-Ramirez’s petition.