

SEP 23 2004

PREGERSON, Circuit Judge, dissenting:

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

We review the decision of the Board of Immigration Appeals (“BIA”); we do not review the decision of the immigration judge. *See Cordon-Garcia v. I.N.S.*, 204 F.3d 985, 990 (9th Cir. 2000). The BIA’s opinion contains no express adverse credibility determination. If the BIA fails to make an explicit adverse credibility finding, we take as true the petitioner’s factual contentions. *Kataria v. I.N.S.*, 232 F.3d 1107, 1114 (9th Cir. 2000). Absent an express adverse credibility determination, the BIA cannot require a petitioner to submit corroborating evidence, as it did here. *Ladha v. I.N.S.*, 215 F.3d 889, 899-901 (9th Cir. 2000).

I would find that the BIA committed a clear error of law by requiring corroborating evidence. I would find that the petitioner’s testimony, taken as true, establishes past persecution and that it is more likely than not that the petitioner will be tortured if returned to India. Because the government has not argued that country conditions have changed, I would find that the petitioner is eligible for asylum, entitled to withholding of removal, and entitled to relief under the Convention Against Torture.

I respectfully dissent.