

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

NOV 09 2007

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

GULAM HUSSEIN,

Petitioner,

v.

PETER D. KEISLER,\*\* Acting Attorney  
General,

Respondent.

No. 04-71265

Agency No. A95-177-600

MEMORANDUM\*

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

Argued and Submitted November 5, 2007  
Pasadena, California

Before: B. FLETCHER, REINHARDT, and RYMER, Circuit Judges.

Gulam Hussein (“Hussein”), a native and citizen of Burma, seeks review of the Board of Immigration Appeals’ (“BIA”) affirmance of the Immigration Judge’s

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

(“IJ”) order denying Hussein’s petition for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”) based on an adverse credibility finding. We have jurisdiction pursuant to 8 U.S.C. § 1252. We grant the petition for review.

We review the adverse credibility finding for substantial evidence. *Garrovillas v. INS*, 156 F.3d 1010, 1013 (9th Cir. 1998). Although this standard is “extremely deferential,” *Singh-Kaur v. INS*, 183 F.3d 1147, 1149 (9th Cir. 1999) (quoting *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995)), we do “not accept blindly an IJ’s conclusion that a petitioner is not credible. Rather, we examine the record to see whether substantial evidence supports that conclusion, and determine whether the reasoning employed by the IJ is fatally flawed.” *Aguilera-Cota v. INS*, 914 F.2d 1375, 1381 (9th Cir. 1990).

The IJ relied on four factors in reaching his adverse credibility finding: vagueness, inconsistencies, implausibility, and lack of corroborating documents.<sup>1</sup> A close review of the record reveals that the IJ’s findings with respect to vagueness, inconsistencies, and implausibility are not supported by substantial

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<sup>1</sup> The BIA did not adopt several of the examples cited by the IJ in support of his adverse credibility finding. We consider only the portions of the IJ’s decision that were adopted and affirmed by the BIA. *See Molina-Estrada v. INS*, 293 F.3d 1089, 1093 (9th Cir. 2002).

evidence.<sup>2</sup> Because we find that “each of the IJ’s . . . proffered reasons for [the] adverse credibility finding fails, we must accept [the] petitioner’s testimony as credible.” *Kaur v. Ashcroft*, 379 F.3d 876, 890 (9th Cir. 2004). Where an applicant testifies credibly, failure to produce corroborating documents can not serve as the basis for an IJ’s adverse credibility finding. *See Ladha v. INS*, 215 F.3d 889, 901 (9th Cir. 2000). We therefore conclude that the IJ’s adverse credibility finding is not supported by substantial evidence.

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<sup>2</sup> A few examples will suffice to demonstrate that the IJ’s adverse credibility determination is not supported by substantial evidence. In support of his finding that Hussein’s testimony was vague, the IJ explained that Hussein did not describe in detail the contents of political pamphlets that he distributed. However, Hussein testified that he was providing a “summary” of the content of the pamphlets and was not asked to provide further detail. In addition, the contents of the pamphlets were described in significant detail in the affidavit Hussein submitted with his asylum application. In support of his finding that Hussein’s testimony was inconsistent, the IJ explained that Hussein described being hit in the back and head during his detention but then later stated that he was hospitalized due to leg injuries. Hussein, however, testified to being hit “*from my back*,” an allegation entirely consistent with injuries to the back of the legs. Moreover, leg pain is consistent with being hit in the back. In support of his finding that Hussein’s testimony was implausible, the IJ speculated, without explanation, that Hussein could not have suffered injuries requiring two weeks of hospitalization and have delayed a week in seeking treatment due to the birth of his first child. This conclusion relied on unsubstantiated conjecture both about a deeply personal choice on the part of Hussein to be present at the birth of his child and about the relationship between the immediacy and length of a hospital stay and the seriousness of the underlying injury. We have, as we must, examined each of the other bases for the IJ’s adverse credibility finding, including those raised in the dissent, and find them equally unsupported by substantial evidence in the record.

The BIA did “not adopt the Immigration Judge [sic] alternate holding that even if the respondent testified credibly he still would not have established eligibility for asylum.”<sup>3</sup> We read the BIA’s decision as determining that absent the adverse credibility finding, Hussein would have established eligibility for asylum. Accordingly, we remand for the exercise of the Attorney General’s discretionary authority with respect to Hussein’s asylum claim and for a determination of whether Hussein’s credible testimony entitles him to a mandatory grant of withholding of removal. *See Duarte de Guinac v. INS*, 179 F.3d 1156, 1164 (9th Cir. 1999).

The IJ’s adverse credibility finding also served as the basis for the denial of CAT relief. In denying Hussein’s CAT claim, the IJ relied on his adverse credibility finding in the asylum context and failed to examine evidence of country conditions contained in the record. *See Taha v. Ashcroft*, 389 F.3d 800, 802 (9th Cir. 2004); *Kamalthas v. INS*, 251 F.3d 1279, 1284 (9th Cir. 2001). *See also* 8 C.F.R. § 208.16(c)(3) (requiring that the agency consider “*all* evidence relevant to the possibility of future torture” in reviewing a claim for CAT relief) (emphasis added). Accordingly, we remand for the BIA to determine whether Hussein is

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<sup>3</sup> The “economic motive” finding by the IJ, adopted by the dissent, served as the basis for the IJ’s alternate holding, which the BIA expressly rejected.

entitled to relief under the CAT, taking his testimony as credible and considering all evidence relevant to the possibility of future torture.

**PETITION GRANTED AND REMANDED.**