

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

KULDIP SINGH,

Petitioner,

v.

ERIC H. HOLDER, JR.,* Attorney
General,

Respondent.

No. 05-71189

Agency No. A076-728-635

MEMORANDUM**

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

Submitted February 11, 2009***
San Francisco, California

Before: GOULD, BYBEE, and TYMKOVICH,**** Circuit Judges.

* Eric H. Holder, Jr. is substituted for Michael B. Mukasey. *See* Fed. R. App. P. 43(c)(2).

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

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

**** The Honorable Timothy M. Tymkovich, United States Circuit Judge for the Tenth Circuit, sitting by designation.

Kuldip Singh petitions for review of the denial of his application for asylum, withholding of removal, and protection under the United Nations Convention Against Torture (CAT). The Board of Immigration Appeals (BIA) affirmed the Immigration Judge's (IJ) denial of Singh's application on credibility grounds.

Because the record supports the IJ's adverse credibility determination, we affirm. The parties are familiar with the factual background, and we need not discuss all of the factual details here.

I.

Where, as here, the BIA adopts the decision of the IJ, we review the IJ's decision as if it were that of the BIA. *Abebe v. Gonzales*, 432 F.3d 1037, 1039 (9th Cir. 2005). Adverse credibility determinations are reviewed under the substantial evidence standard. *Tawadrus v. Ashcroft*, 364 F.3d 1099, 1102 (9th Cir. 2004). Because we review the IJ's adverse credibility findings for substantial evidence, we must determine if the record—*as a whole*—exposes sufficient concerns that would compel us to find “any reasonable adjudicator” would have come to a different conclusion concerning Singh's credibility. *See Knezevic v. Ashcroft*, 367 F.3d 1206, 1210–11 (9th Cir. 2004). We accord “special deference to an IJ's credibility determination, and will only exercise our power to grant a petition for

review when the evidence compels a contrary conclusion.” *Kaur v. Gonzales*, 418 F.3d 1061, 1064 (9th Cir. 2005) (quotation and minor alteration omitted).

The IJ “must have a legitimate articulable basis to question the petitioner’s credibility, and must offer a specific, cogent reason for any stated disbelief.” *Salaam v. I.N.S.*, 229 F.3d 1234, 1238 (9th Cir. 2000) (quotation omitted). Further, any such reason “must be substantial and bear a legitimate nexus to the finding” and cannot be based on “speculation and conjecture.” *Id.* (quotation and citation omitted); *see also Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007) (stating the IJ’s adverse credibility determination must go “to the heart of petitioner’s claim” (quotation omitted)).¹

Therefore, we “examine the record to see whether substantial evidence supports . . . [the adverse credibility] conclusion and determine whether the reasoning employed by the IJ is fatally flawed.” *Gui v. I.N.S.*, 280 F.3d 1217, 1225 (9th Cir. 2002); *see Kaur*, 418 F.3d at 1066 (“It is well established in this circuit that . . . inconsistencies must be viewed in light of all the evidence presented in the case. . . . Hence, it is incumbent upon the IJ to view each portion of an alien’s

¹ Because petitioner filed his asylum application before May 2005, the provision of the REAL ID Act providing that an adverse credibility finding may be supported by minor inconsistencies does not apply. *Zhu v. Mukasey*, 537 F.3d 1034, 1039 n.1 (9th Cir. 2008).

testimony, not solely as independent pieces of evidence with no bearing on the testimony as a whole, but in light of all of the evidence presented.”).

II.

On appeal, Singh asserts the IJ erred by (1) making “boilerplate,” non-specific demeanor findings; (2) improperly weighing evidence concerning his non-observance of Sikh practices, his purported reasons for joining the Akhali Dal Mann (ADM), and his testimony regarding the 1991 and 1992 elections in the Punjab region; and (3) basing the adverse credibility finding on “faulty and unreliable” translation services at the hearings. Specifically, Singh claims the IJ’s credibility determination is not supported by substantial evidence because any inconsistencies in his testimony were minor, do not go to the merits of his petition, and are based on improper assumptions about Sikhs and their culture. For a number of reasons, we disagree.

First, Singh alleges the IJ based her credibility findings on her observation of Singh’s demeanor yet failed to point out any *specific* aspects of his demeanor warranting her adverse conclusion.

The IJ, however, did not base the adverse credibility findings on Singh’s general demeanor, but rather made *specific, cogent* references to his

unresponsiveness to basic questions concerning Sikh beliefs and his failure to follow the grooming practices—uncut hair and a long beard.

Second, Singh argues the IJ improperly based her credibility decision on his non-observance of orthodox Sikh practices. Although, in the abstract, the inconsistencies appear to be insignificant and possibly immaterial, given Singh’s explicit assertion of his religious faith and cultural views, his inability to testify to any specific Sikh beliefs and his failure to abide by Sikh traditions do go to his credibility. For example, when testifying, Singh failed to identify *any* common Sikh beliefs or practices despite several opportunities to do so. His own attorney asked him “what are the main tenets of your religion?” Although Singh initially did not understand the question, his attorney rephrased and asked:

[Singh’s attorney:] What are the things Sikhs do when they follow their religion or when they practice religion?

[Singh:] For following our religion we do a lot of things that has been happening to the Singhs and we want Khalistan for that.

...

[Singh’s attorney:] Do you practice your religion?

[Singh]: Yes.

[Singh’s attorney:] Okay. So what are the things you do when you observe your religion?

[Singh:] We do the nice things and warn people to go on the right way and take part in the rallies.

It is not unreasonable for the IJ to expect someone who claims he attended Sikh temple daily to have “learned about Sikh rule over the Punjab,” and who

expressly asserts “Sikhs are totally different from other Indians in their religion[,] culture, language and customs” to have more than a limited knowledge of Sikh traditions and practices. *See Singh v. Ashcroft (Mohinder)*, 367 F.3d 1139, 1143 (9th Cir. 2004) (approving of adverse credibility conclusion based in part on an expectation that one who claims active participation in a group to have a deeper understanding of that group’s beliefs and goals).

Third, Singh argues his past and present appearance do not evince an inconsistency in his claim that he is a Sikh and that he was persecuted as such. While following every Sikh practice regarding physical appearance may be of limited value, when combined with Singh’s lack of specificity about Sikh practices and his activities as a member of an opposition party, it provides some support to the overall mix of evidence relied on by the IJ.

Fourth, the IJ referenced Singh’s inability to provide detail concerning the Akhali Dahl organization to which Singh allegedly belonged. Especially in light of Singh’s purported reasons for seeking asylum, persecution due to his religious beliefs and membership in ADM, the judge could reasonably expect more. Again, the judge did not base her entire credibility finding on Singh’s knowledge of the ADM, but rather cited Singh’s testimony as merely *another* factor.

For example, Singh’s testimony about his participation in elections in 1991 and 1992 in the Punjab region contained inconsistencies regarding his membership in ADM. While claiming—at first—there were elections in both 1991 and 1992 and that he did not vote for various personal reasons, Singh later conceded the 1991 elections were cancelled after the assassination of Ghandi, and similarly admitted the 1992 elections were boycotted by most Punjabi residents.

In particular, Singh claimed his membership in ADM, his status as a Sikh, and his life as a villager were all reasons for the persecution he faced in the Punjab region. Therefore, any questions concerning his participation in the political sphere as well as his knowledge concerning particularly momentous election cycles were material.

Finally, Singh claims the IJ’s credibility determination was in error because “a faulty and unreliable translation” necessarily undermines the record evidence. The BIA addressed this contention,² noting that Singh had made no objection to the use of a second interpreter after the hearing had been continued. Our decision in *Singh*, 367 F.3d at 1143–44, directly resolves this contention.

² Although the BIA adopted the IJ’s opinion in its entirety, the BIA opinion did directly address the purported translation issues. To the extent the BIA reviewed the IJ’s opinion *de novo*, our review is limited to the BIA’s decision. *Shah v. I.N.S.*, 220 F.3d 1062, 1067 (9th Cir. 2000).

Here, as in *Singh (Mohinder)*, Singh does not identify any of his particular responses as inaccurate; rather, he merely challenges the broken English translation as unfairly minimizing his perceived competence. Nor does the record, or even his brief on appeal, reflect a request that we remand the matter for clarification. Instead, he challenges the IJ's adverse credibility findings on this basis even though the IJ neither referenced any of these translation issues in her opinion. Finally, the IJ here cited a series of factors for her conclusion regarding Singh's credibility, none of which are reasonably brought into question by any apparent translation difficulties.

For the foregoing reasons, we conclude the IJ's adverse credibility determination, considering the record as a whole, is supported by substantial evidence.

III.

We also find Singh is not entitled to asylum. Section 208(a) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1158(a), authorizes the Attorney General, in his discretion, to grant political asylum to any alien he determines to be a "refugee" within the meaning of section 101(a)(42)(A) of the Act. *Pedro-Mateo v. I.N.S.*, 224 F.3d 1147, 1149 (9th Cir. 2000) (citing 8 U.S.C. § 1101(a)(42)(A)). A refugee is defined as "an alien unwilling to return to his country of origin

‘because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.’” *Id.* at 1149–50 (quoting 8 U.S.C. § 1101(a)(42)(A)); *see also Sidhu v. I.N.S.*, 220 F.3d 1085, 1090 (9th Cir. 2000) (“Under 8 C.F.R. § 208.13, the ‘burden of proof is on the applicant for asylum to establish that he or she is a refugee as defined in section 101(a)(42) of the Act.’”).

We have previously stated that “[b]ecause asylum cases are inherently difficult to prove, an applicant may establish his case through his own testimony alone.” *Chebchoub v. I.N.S.*, 257 F.3d 1038, 1042 (9th Cir. 2001) (quoting *Sangha v. I.N.S.*, 103 F.3d 1482, 1487 (9th Cir. 1997)). Nevertheless, 8 C.F.R. § 208.13(a) “plainly indicates that if the trier of fact either does not believe the applicant or does not know what to believe, the applicant’s failure to corroborate his testimony can be fatal to his asylum application.” *Id.* (quotation omitted).

Here, the IJ determined Singh’s testimony was not credible, and therefore Singh bore the burden of presenting some corroborating evidence in addition to his testimony to show past or possible future persecution. None of the documents submitted at the hearing established his identity, substantiated his membership in ADM, nor supported his contentions regarding his encounters with Indian police. Further, Singh failed to offer or present any readily available evidence that may

have buttressed his asylum and withholding of removal claims in light of his questionable credibility.

IV.

Finally, addressing Singh's petition for withholding of removal, Singh has not met his burden to "establish by a 'clear probability' that [his] life or freedom would be threatened in the proposed country of removal." *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004) (quoting *I.N.S. v. Stevic*, 467 U.S. 407, 413 (1984)). Because Singh failed to present sufficient credible testimony and evidence to sustain his asylum petition, his withholding of removal claim necessarily fails as well.³

PETITION FOR REVIEW DENIED IN PART AND DISMISSED IN PART.

³ Singh also argues he faces a significant threat of torture if he were to return to India and asks us to grant him relief under CAT. Because the IJ denied Singh's claims under CAT, Singh could have challenged the IJ's decision on appeal to the BIA. However, he chose not to do so. Therefore, his CAT claim remains unexhausted and we are without jurisdiction to hear this issue on Singh's appeal here. *See Zara v. Ashcroft*, 383 F.3d 927, 930 (9th Cir. 2004).