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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YUNG YING SHI, Petitioner, v. ERIC H. HOLDER, Jr., Attorney General, Respondent.	No. 05-72223 Agency No. A-79-729-002 MEMORANDUM*

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

Submitted March 18, 2009 **

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Yung Ying Shi, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's ("IJ") decision denying her applications for asylum, withholding of

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

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

removal, and protection under the Convention Against Torture ("CAT"). Our jurisdiction is governed by 8 U.S.C. § 1252. Reviewing for substantial evidence, *Ramos-Vasquez v. INS*, 57 F.3d 857, 861 (9th Cir. 1995), we grant in part and dismiss in part the petition for review.

The IJ denied relief based on an adverse credibility finding. Though the IJ put forth a number of testimonial inconsistencies in support thereof, the inconsistencies are based on impermissible conjecture, are not central to Shi's asylum claim, nor are they supported by the record. *See Bandari v. INS*, 227 F.3d 1160, 1166 (9th Cir. 2000). Similarly, the IJ's stated reasons for making a demeanor-based adverse credibility determination either do not find support in the record, *see Jibril v. Gonzales*, 423 F.3d 1129, 1137 (9th Cir. 2005), or do not relate to Shi's demeanor at all.

Because the IJ failed to put forth a legitimate basis to question Shi's credibility, we accept her testimony as true. *See Kaur v. Ashcroft*, 379 F.3d 876, 890 (9th Cir. 2004), Shi's testimony of a forced abortion entitles her to asylum and withholding of removal. *See* 8 U.S.C. § 1101(a)(42); *Qu v. Gonzales*, 399 F.3d 1195, 1203 (9th Cir. 2005).

Alternatively, we find that Shi was denied a full and fair hearing due to the IJ's obvious bias. Throughout the hearing, IJ Anna Ho badgered Shi with loaded, pejorative questions and effectively abandoned her role as a neutral fact finder.[1]

We need not reach Shi's contentions that she is entitled to relief under CAT, or that the IJ erred in determining that Shi failed to produce sufficient corroborating evidence.

Finally, because Shi did not raise the issue before the BIA, we lack jurisdiction to consider whether the IJ's decision to accord Shi's documents very little weight violated Shi's due process rights. *See Zara v. Ashcroft*, 383 F.3d 927, 930 (9th Cir. 2004).

As the prevailing party, Shi is entitled to costs in this court.

PETITION FOR REVIEW GRANTED, except for petitioner's due process claim which we dismiss for failure to exhaust.

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[1] Nor is this the first time this court has found this particular IJ's judicial behavior lacking. *See Smolniakova v. Gonzales*, 422 F.3d 1037, 1047 & n.2 (9th Cir. 2005).

Dissent:

Judge Leavy would deny the petition for review.