

APR 24 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MOHINDER SINGH,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p style="text-align: center;">Respondent.</p>
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No. 05-72630

Agency No. A076-847-165

MEMORANDUM *

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

Argued and Submitted April 17, 2009
San Francisco, California

Before: NOONAN, ARCHER, ** and McKEOWN, Circuit Judges

False statements or inconsistencies “must be viewed in light of all the evidence presented in the case.” *Kaur v. Gonzales*, 418 F.3d 1061, 1066 (9th Cir. 2005). The BIA highlighted two examples: the number of arrests and the knee

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

** The Honorable Glenn L. Archer, Jr., Senior United States Circuit Judge for the Federal Circuit, sitting by designation.

injury. Substantial evidence supports neither. “To support an adverse credibility determination based on unresponsiveness, the BIA must identify particular instances in the record where the petitioner refused to answer questions asked of him.” *Singh v. Ashcroft*, 301 F.3d 1109, 1114 (9th Cir. 2002). Singh not only answered the questions put to him about the number of his arrests, but he provided a reasonable explanation for the apparent discrepancy. “An adverse credibility finding is not based on substantial evidence when ‘[t]he BIA [or the IJ] did not comment on [an applicant’s] explanation, nor suggest any reason that it found his explanation not credible.’” *Guo v. Ashcroft*, 361 F.3d 1194, 1201 (9th Cir. 2004), quoting *Garrovillas*, 156 F.3d 1010, 1013 (9th Cir. 1998).

In regard to the knee injury, this Court has “long recognized that difficulties in interpretation may result in seeming inconsistencies, especially in cases...where there is a language barrier.” *Mendoza Manimbao v. Ashcroft*, 329 F.3d 655, 662 (9th Cir. 2003); *see also Zahedi v. INS*, 222 F.3d 1157, 1167 (9th Cir. 2000). There was nothing unresponsive about the answers Singh provided. The IJ’s obtuse manner of questioning Singh about the injury done to his knee during interrogation disregarded translation difficulties. This Court has further held that a minor omission in a doctor’s letter cannot be deemed an inconsistency. *Singh v. Ashcroft*, 301 F.3d at 1112-13.

We REMAND to the BIA for proceedings consistent with this opinion.