

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOV 18 2022

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

GANG SUN,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 15-72782

Agency No. A201-056-974

MEMORANDUM*

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

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Gang Sun, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ's") decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

(“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings, applying the standards governing adverse credibility determinations under the REAL ID Act. *Shrestha v. Holder*, 590 F.3d 1034, 1039-40 (9th Cir. 2010). We deny the petition for review.

Substantial evidence supports the agency’s adverse credibility determination based on Sun’s inconsistent testimony as to the documents he signed while he was detained, an inconsistency between his testimony and documentary evidence about his employment performance, and an omission regarding the severity of the harm he experienced while detained. *See id.* at 1047 (adverse credibility finding reasonable under the totality of the circumstances); *see also Rodriguez-Ramirez v. Garland*, 11 F.4th 1091, 1093 (9th Cir. 2021) (agency can afford substantial weight to inconsistencies that bear directly on petitioner’s claim of persecution); *Iman v. Barr*, 972 F.3d 1058, 1067-69 (9th Cir. 2020) (discussion of the analysis required to determine whether an omission can support an adverse credibility determination). Sun’s explanations do not compel a contrary conclusion. *See Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000). Thus, in the absence of credible testimony, in this case, Sun’s asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003) (failure to satisfy lower asylum standard results in failure to satisfy withholding standard); *see also Garcia v. Holder*, 749 F.3d 785, 791 (9th Cir. 2014) (petitioner’s documentary evidence

was insufficient to rehabilitate credibility or independently support claim).

In light of this disposition, we need not reach Sun's remaining contentions regarding the merits of his claims. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to decide issues unnecessary to the results they reach).

We do not consider Sun's contentions as to an imputed political opinion and his violation of China's exit laws because the BIA did not decide these issues, *see Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011) (review limited to the grounds relied on by the BIA), and Sun does not contend the BIA erred in finding that these claims were not properly before it, *see Corro-Barragan v. Holder*, 718 F.3d 1174, 1177 n.5 (9th Cir. 2013) (failure to contest issue in opening brief resulted in waiver).

Substantial evidence supports the agency's denial of CAT protection because Sun's claim was based on the same testimony the agency found not credible, and Sun does not point to any other evidence in the record that compels the conclusion that it is more likely than not he would be tortured in China. *See Farah*, 348 F.3d at 1157.

We do not consider the materials Sun references in his opening brief that are not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963-64 (9th Cir. 1996) (en banc).

The temporary stay of removal remains in place until the mandate issues.

PETITION FOR REVIEW DENIED.