

**UNITED STATES COURT OF APPEALS**

**FOR THE SECOND CIRCUIT**

August Term, 2007

(Argued: April 23, 2008

Decided: June 10, 2008)

Docket No. 07-0963-ag

- - - - -x

YING LI,

Petitioner,

- v.-

BUREAU OF CITIZENSHIP AND IMMIGRATION  
SERVICES,

Respondent.

- - - - -x

Before: JACOBS, Chief Judge, KEARSE and KATZMANN,  
Circuit Judges.

In this review of a decision of the Board of  
Immigration Appeals summarily affirming an immigration  
judge's ("IJ") denial of a petition for asylum, withholding  
of removal, and protection under the Convention Against  
Torture, we hold that the IJ's adverse credibility  
determination, based on implausibility, is supported by

1 substantial evidence. While explanations are available for  
2 features of petitioner's account that were found  
3 implausible, we review the entire record, not whether each  
4 unusual feature of the account can be explained or  
5 rationalized. See Borovikova v. U.S. Dep't of Justice, 435  
6 F.3d 151, 161 (2d Cir. 2006). The petition is denied.

7  
8 Lorance Hockert, New York, NY,  
9 for Petitioner.

10  
11 Susan K. Houser, Senior  
12 Litigation Counsel, Office of  
13 Immigration Litigation, Civil  
14 Division, United States  
15 Department of Justice (Peter D.  
16 Keisler, Assistant Attorney  
17 General, and Lisa M. Arnold,  
18 Senior Litigation Counsel, on  
19 the brief), Washington, DC, for  
20 Respondent.

21  
22 DENNIS JACOBS, Chief Judge:

23  
24 Petitioner Ying Li, a native and citizen of the  
25 People's Republic of China, seeks review of a summary  
26 affirmance by the Board of Immigration Appeals ("BIA") of  
27 the oral decision of an immigration judge ("IJ"), which  
28 denied her application for asylum, withholding of removal,  
29 and protection under the Convention Against Torture ("CAT").  
30 In re Li, Ying, No. A 95 688 247 (B.I.A. Feb. 20, 2007),  
31 aff'g No. A 95 688 247 (Immig. Ct. New York City, Aug. 9,

1 2005). Li's asylum application is premised on her claim  
2 that the Chinese government persecuted her for supporting  
3 Falun Gong. The IJ determined that Li was not credible,  
4 chiefly on the ground that her account is implausible, and  
5 denied her applications on that basis.

6 We conclude that the IJ's adverse credibility  
7 determination is supported by substantial evidence. The IJ  
8 relied on several "valid" and "cogent" reasons for rejecting  
9 Li's testimony as implausible. See Ming Xia Chen v. BIA,  
10 435 F.3d 141, 145 (2d Cir. 2006). While explanations are  
11 available for features of petitioner's account that were  
12 found implausible, we review the entire record, not whether  
13 each unusual feature of the account can be explained or  
14 rationalized. See Borovikova v. U.S. Dep't of Justice, 435  
15 F.3d 151, 161 (2d Cir. 2006). The IJ could conclude that  
16 Li's account, taken all in all, is implausible; and so we  
17 cannot say that any reasonable adjudicator would be  
18 compelled to conclude that she testified credibly.  
19 Accordingly, the petition is denied.

20  
21 **I**

22 Ying Li was placed in removal proceedings in January

1 2005 when she attempted to enter the United States without  
2 valid travel documents. Li applied for asylum, withholding  
3 of removal, and relief under the CAT, claiming that the  
4 Chinese government persecuted her for her involvement with  
5 Falun Gong.

6 Li's account--as set forth in her asylum application  
7 and at her merits hearing--is as follows:

8 Her uncle's friend, a practitioner, introduced  
9 her to Falun Gong. Although Li had only a "basic  
10 understanding" of Falun Gong, she was "very  
11 interested" in it because "it [is] a good  
12 practice" and is beneficial to physical and mental  
13 health. Li promoted Falun Gong "because [she]  
14 believed that [Falun] Gong was not an evil cult."  
15 However, Li was too busy with her studies to learn  
16 or practice Falun Gong in China.

17 After the Chinese government declared Falun  
18 Gong an "evil cult," her uncle's friend went into  
19 hiding. Li thought that the Chinese government  
20 "should not suppress and persecute Falun Gong  
21 followers, who were kind and innocent." Li, a  
22 student at the Fuzhou City Industrial School,

1 would sometimes promote among her classmates  
2 opposition to the government's suppression of  
3 Falun Gong. In September 2003, school officials  
4 forcibly detained her for seven hours, beat her,  
5 and forced her to sign a letter promising that she  
6 would end her involvement with Falun Gong.

7 When her uncle's friend visited her in August  
8 2004, he encouraged Li to continue her support.  
9 This individual visited Li's family home about  
10 twenty times over a four to six week period. In  
11 September 2004, while Li was away, the police came  
12 to her home to arrest her. They told her father  
13 that someone had reported that she "colluded with  
14 Falun Gong followers," and they challenged him  
15 when he denied that she was member of Falun Gong.  
16 According to Li, "[g]overnment officials pursued  
17 me everywhere, [and] threatened my family to  
18 disclose my whereabouts." Subsequently, Li's  
19 family arranged for her to leave China. In the  
20 United States, Li practices Falun Gong two to  
21 three times per week. She fears returning to  
22 China because "the Chinese government would arrest

1 me, sentence me, and further persecute me" for  
2 being involved with Falun Gong.

3 The IJ denied Li's application for asylum, withholding  
4 and CAT protection, reasoning, as described in Part III.B  
5 below: "None of this testimony is plausible or credible to  
6 the Court and, therefore, the Court does not believe that  
7 the respondent has presented testimony to which I can give  
8 credence." In February 2007, the BIA summarily affirmed.  
9

## 10 II

11 In considering an application for asylum, withholding  
12 of removal, and CAT protection, the agency generally must  
13 make a credibility finding; failure to do so may be a ground  
14 for vacatur. See Diallo v. INS, 232 F.3d 279, 290 (2d Cir.  
15 2000). Although Li asserts on appeal that the IJ failed to  
16 make an adverse credibility determination, she did not  
17 exhaust this issue before the BIA; to the contrary, her  
18 submission to the BIA challenged the adverse credibility  
19 determination that the IJ made. We decline to consider this  
20 argument on appeal, and deem it forfeited. See Lin Zhong v.  
21 U.S. Dep't of Justice, 480 F.3d 104, 107 n.1 (2d Cir. 2007).  
22



1 significant aspects of the testimony were implausible, the  
2 decisions of our Court have not been entirely consistent.”  
3 Ming Xia Chen v. BIA, 435 F.3d 141, 145 (2d Cir. 2006). For  
4 example, “we have cited approvingly the BIA’s view that an  
5 adverse credibility finding may be based on ‘inherently  
6 improbable testimony.’” Id. (quoting Diallo v. INS, 232  
7 F.3d 279, 287-88 (2d Cir. 2000)); see In re S-M-J-, 21 I. &  
8 N. Dec. 722, 729 (B.I.A. 1997) (“Adverse credibility  
9 determinations are appropriately based on inconsistent  
10 statements, contradictory evidence, and inherently  
11 improbable testimony . . . .”). But we have also said that  
12 an “IJ must point to valid, or specific, cogent reasons for  
13 rejecting an applicant’s testimony and may not reject  
14 testimony based on speculation.” Ming Xia Chen, 435 F.3d at  
15 145 (internal quotation marks and citations omitted). To be  
16 sure, “the line between reasonable inference-drawing and  
17 speculation is imprecise,” Guo-Le Huang v. Gonzales, 453  
18 F.3d 142, 147 (2d Cir. 2006), and we do not undertake such a  
19 delineation here. Nevertheless, we must decide on which  
20 side of this blurry divide Li’s case falls. See Ming Xia  
21 Chen, 435 F.3d at 145.

22 **B**



1           The IJ found Li's account implausible because:

2                   [1] Li claimed to promote Falun Gong for over  
3                   six years (beginning at age 14) without ever  
4                   learning or practicing it herself.

5                   [2] The police sought to arrest Li, a teenager  
6                   who never studied or practiced Falun Gong in  
7                   China; yet her uncle's friend, a Falun Gong  
8                   practitioner, openly visited her home twenty times  
9                   and was never arrested.

10                  [3] Li was able to depart China from the  
11                  airport using her own passport.

12                  [4] At her hearing, Li recited only  
13                  "elementary information" about Falun Gong and  
14                  presented photographs of herself practicing Falun  
15                  Gong which were, as Li acknowledged, taken on a  
16                  single occasion.

17           Li responds that [1] she can claim persecution on  
18           account of her support for Falun Gong without practicing it;  
19           [2] nothing indicates that Li's neighbors or the authorities  
20           knew that she was discussing Falun Gong with her uncle's  
21           friend; [3] she was probably able to leave China on her own  
22           passport because she was wanted by local, not national

1 authorities; and [4] she answered every question asked  
2 regarding her present involvement with Falun Gong.

3 Some features of Li's account that were doubted by the  
4 IJ can be rationalized or subjected to useful further  
5 inquiry and analysis. But when an adverse credibility  
6 finding is based partly or entirely on implausibility, we  
7 review the entire record, not whether each unusual or  
8 implausible feature of the account can be explained or  
9 rationalized. See Borovikova, 435 F.3d at 161 ("When an IJ  
10 bases an adverse credibility finding on multiple grounds, we  
11 review the totality of the IJ's decision, instead of  
12 dissecting the IJ's opinion and reviewing each portion in  
13 isolation."); cf. Liang Chen v. U.S. Atty. Gen., 454 F.3d  
14 103, 106-07 (2d Cir. 2006) (explaining that an IJ "may rely  
15 upon the cumulative impact" of inconsistencies "and may  
16 conduct an overall evaluation of testimony in light of its  
17 rationality or internal consistency and the manner in which  
18 it hangs together with other evidence" (internal quotation  
19 marks and citations omitted)).

20 On the basis of the entire record, we cannot disturb  
21 the IJ's finding that Li's account is implausible. The  
22 picture that emerges is of a student who promoted Falun Gong

1 among her classmates (but did not practice it), who was  
2 harassed by local officials (alone among her family), who  
3 met with a Falun Gong practitioner repeatedly and openly  
4 (although he was never arrested), and who successfully quit  
5 the country using her own passport (despite allegations of  
6 nationwide persecution). Still other implausibilities  
7 inhere in Li's account--for example, if Li was able to leave  
8 China on her own passport because she was wanted only by  
9 local authorities (as Li contends), why didn't she go to the  
10 next village or elsewhere in that capacious land?

11       There are available explanations. A person could, out  
12 of affection for a friend or altruistic commitment to  
13 liberty, risk her safety or give up her country for  
14 something she does not thoroughly understand or practice.  
15 Cf. Rizal v. Gonzales, 442 F.3d 84, 90 (2d Cir. 2006)  
16 ("[P]eople can identify with a certain religion,  
17 notwithstanding their lack of detailed knowledge about that  
18 religion's doctrinal tenets, and . . . those same people can  
19 be persecuted for their religious affiliation."). And it is  
20 possible that the Chinese authorities identified a high  
21 school student, and laid a dragnet for her, while failing to  
22 locate her friend's uncle, an adult who practices and

1 proselytizes. And she might have thought she could give the  
2 police the slip at the airport (and did) even while using  
3 her own passport to leave the country.

4 At the same time, these available possibilities do not  
5 defeat a finding that the account is implausible. Features  
6 of the account are somewhat surprising. Moreover, the  
7 contours of the narrative are drawn in a way that evades  
8 corroboration to an unusual extent. Her account is one that  
9 could be established solely by perjury, permitting an  
10 inference of fabrication.

11 In light of the overall implausibility of Li's account,  
12 we cannot say that any reasonable adjudicator would be  
13 compelled to conclude that Li testified credibly. See 8  
14 U.S.C. § 1252(b)(4)(B). Accordingly, we uphold the IJ's  
15 adverse credibility determination and denial of Li's  
16 applications.

17  
18 \* \* \*

19 For the foregoing reasons, we deny the petition for  
20 review. Having completed our review, the pending motion for  
21 a stay of removal in this petition is denied as moot.