

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NOV 25 2022

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

WENYUAN SHI,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 16-72180

Agency No. A089-978-080

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.

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

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\* 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"). Our jurisdiction is governed by 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 review de novo questions of law, including due process contentions. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency's adverse credibility determination based on inconsistencies between Shi's testimony and documentary evidence regarding his lengthy residence and employment in China and in Romania, and his implausible testimony about not being able to return to Romania if he feared harm in China. *See Shrestha*, 590 F.3d at 1048 (adverse credibility finding reasonable under the totality of the circumstances). Shi's explanations do not compel a contrary conclusion. *See Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000). Substantial evidence also supports the agency's determination that without credible testimony, Shi failed to establish eligibility for asylum or withholding of removal. *See Garcia v. Holder*, 749 F.3d 785, 791 (9th Cir. 2014) (applicant's documentary evidence was insufficient to independently support claim). Thus, Shi'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).

We lack jurisdiction to consider Shi’s contention that he established eligibility for CAT protection because he failed to raise the issue before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (petitioner must exhaust issues or claims in administrative proceedings below).

To the extent that Shi raises a due process contention, his claim that the IJ erred by disallowing an undisclosed witness fails because he has not shown error. *See Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014) (“To prevail on a due-process claim, a petitioner must demonstrate both a violation of rights and prejudice.”); *see also Owino v. Holder*, 771 F.3d 527, 532 (9th Cir. 2014) (“[T]he regulations vest the IJ with discretion to manage the presentation of evidence, including setting deadlines for the admission of evidence.”).

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

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**