

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 19 2021

FOR THE NINTH CIRCUIT

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

LINA TAN,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 18-71241

Agency No. A205-768-434

MEMORANDUM*

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

Submitted March 16, 2021**

Before: GRABER, R. NELSON, and HUNSAKER, Circuit Judges.

Lina Tan, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's decision denying her application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under

* 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).

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 Tan’s omission of a phone call with her employer from her asylum application and declaration that, when raised for the first time in Tan’s testimony, described a new aspect of Tan’s claimed fear of returning to China. *See id.* at 1048 (adverse credibility determination reasonable under “the totality of circumstances”); *see also Silva-Pereira v. Lynch*, 827 F.3d 1176, 1185-86 (9th Cir. 2016) (prior omission supported adverse credibility determination where new allegations presented a more compelling claim of persecution). Tan’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 finding that Tan did not present documentary evidence that would otherwise establish her eligibility for relief. *See Garcia v. Holder*, 749 F.3d 785, 791 (9th Cir. 2014) (petitioner’s documentary evidence was insufficient to independently support claim in part because declarants were not available for cross examination and the authenticity of the documents relied on applicant’s discredited testimony). Thus, in the absence of

credible testimony, in this case, Tan's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Finally, substantial evidence supports the agency's denial of Tan's CAT claim because it was based on the same evidence found not credible, and the additional evidence in the record does not compel the conclusion that it is more likely than not she would be tortured by or with the consent or acquiescence of the government if returned to China. *See Shrestha*, 590 F.3d at 1048-49.

As stated in the court's July 24, 2018 order, the temporary stay of removal remains in place until issuance of the mandate.

PETITION FOR REVIEW DENIED.