

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MIRABEL E. MUNYUH, AKA Mirabel
Endam Munnyuh,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 19-72890

Agency No.
A215-821-395

OPINION

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

Argued and Submitted May 3, 2021
Seattle, Washington

Filed August 25, 2021

Before: Danny J. Boggs,* A. Wallace Tashima, and
Marsha S. Berzon, Circuit Judges.

Opinion by Judge Boggs

* The Honorable Danny J. Boggs, Senior Circuit Judge of the United States Court of Appeals for the Sixth Circuit, sitting by designation.

SUMMARY**

Immigration

The panel granted Mirabel Munyuh's petition for review of a decision of the Board of Immigration Appeals denying asylum and related relief on adverse credibility grounds, vacated the order of removal, and remanded for further proceedings.

The panel held that the immigration judge erred by failing to give specific, cogent reasons for rejecting Munyuh's reasonable, plausible explanations for the discrepancies tied to her declaration concerning the distance she traveled in a police truck before escaping on foot after officers raped her and being rescued by her husband. The panel held that the IJ further erred by discounting Munyuh's supporting documentation without giving her adequate notice and opportunity to provide corroborative evidence.

The panel wrote that from its reading of the record, the IJ seemed determined to pick every nit she could find. Besides erring procedurally, the IJ discounted probative evidence on flimsy grounds and displayed a dubious understanding of how rape survivors ought to act. The panel explained that although it gives great deference to the IJ as factfinder, substantial-evidence review does not require it to credit the credibility finding of an IJ who cherry-picks from—or misconstrues—the record to reach it. Rather, the IJ must consider the totality of the circumstances, and all

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

relevant factors. The panel therefore vacated the removal order and remanded the case to the Board for further proceedings consistent with its opinion.

COUNSEL

Ronald D. Richey (argued), Law Office of Ronald D. Richey, Rockville, Maryland, for Petitioner.

Rachel P. Berman-Vaporis (argued), Trial Attorney; Mary Jane Candaux, Assistant Director; Office of Immigration Litigation, Civil Division, United States Department of Justice, Washington, D.C.; for Respondent.

OPINION

BOGGS, Circuit Judge:

Mirabel Munyuh, a Cameroonian national, petitions for review of an order of the Board of Immigration Appeals (the Board). After removal proceedings, an immigration judge (IJ) denied Ms. Munyuh's application for asylum, withholding of removal, and relief under the Convention Against Torture, and the Board dismissed Ms. Munyuh's appeal of that denial. Exercising jurisdiction under 8 U.S.C. § 1252(a)(1), we grant the petition for review, vacate the order of removal, and remand for further proceedings consistent with this opinion.

I. Factual and Procedural History

A. Background

Cameroon is a sub-Saharan African republic dominated by a strong presidency. The current president, Paul Biya, has been in power since 1982. In 2016, a sociopolitical crisis began in the Northwest and Southwest Regions of Cameroon. Those regions were formerly British mandates; the rest of the country became a French colony after World War I. Thus, these two regions are predominately Protestant and English-speaking, and the rest of Cameroon is predominately Catholic and French-speaking (although Biya's government is officially secular).

Violence has broken out between separatist groups in the anglophone regions and Cameroonian security forces. Both the separatists and the state's security forces have engaged in human-rights violations, including unlawful and arbitrary killings, torture, forced disappearances, prolonged detention in harsh, life-threatening prison conditions, interference with privacy rights, use of child soldiers, and violence against women.

Ms. Munyuh is a Protestant and anglophone, although Moghamo, not English, is her mother tongue. Before the incident leading to Ms. Munyuh's flight, she lived in Santa, a small township about 23 kilometers (14 miles) south of Bamenda, the capital of the Northwest Region. She taught physical education there, and, although not a marathon runner, she remained physically active, running for about an hour at a time three days per week.

She is married and has one child, a 14-year-old son. Both her husband and son are still living in Cameroon. Ms. Munyuh's husband lived separately from her and

worked in Yaoundé, the capital of Cameroon. Yaoundé is about 372 kilometers (231 miles) southeast of Bamenda; the most direct route between the two cities passes through Santa.

B. Ms. Munyuh's Account

Ms. Munyuh gave a harrowing account of her treatment by Cameroonian police in July 2018. According to her, the morning after an old friend from primary school stayed at Ms. Munyuh's house, officers forced open her front door, ransacked her home, and took her into custody. Ms. Munyuh's friend was suspected of being a member of the SCNC, an anglophone separatist group, and the officers accused Ms. Munyuh of being a member too.

The officers threw Ms. Munyuh to the ground and kicked and slapped her, causing swelling on her face and legs. After this beating, the officers took her to a detention facility in the city of Bamenda and put her into a cell with about thirty others. Ms. Munyuh did not know any of the other people in the cell, nor did she know why they had been detained. The police did not give her food or water, did not let her communicate with her family or attorney, and continued beating her. She remained in the cell for 15 or 16 hours.

That night, about ten officers loaded Ms. Munyuh onto a truck with the other detainees from her cell; they were all to be taken to the central prison in Yaoundé, capital of Cameroon. At some point along the way—the actual time and distance being a point of dispute in this case—the truck broke down. While the truck was stopped, officers took the women out of the truck and into the bush to sexually assault them. Two officers raped Ms. Munyuh. After the second officer raped Ms. Munyuh, he did not stay close to her. Before she could be raped by a third officer, she gathered her

strength and managed to escape into the surrounding wilderness by sneaking away in the darkness and then running as fast as she could.

Traveling by foot until daybreak, Ms. Munyuh eventually reached a phone booth in the town of Bafia, in the central region of Cameroon. She learned the name of the town from the owner of the phone booth and called her husband, who was in Yaoundé, to tell him what had happened and where she was. He told her to continue to hide in the bush while he drove to Bafia, about two hours away from Yaoundé. He picked up Ms. Munyuh and then drove her to a hospital back in Yaoundé. Ms. Munyuh was examined by a doctor, who determined that her condition warranted hospital admission. Ms. Munyuh provided the IJ with a copy of her medical report, detailing bruises and tenderness across her head, chest, back, and feet, and swelling and lacerations of her genitals supporting a conclusion of forceful vaginal penetration. Afraid that the police would find her if she stayed at the hospital, Ms. Munyuh declined to be admitted, and the doctor instead assigned two nurses to provide follow-up care at her husband's residence.

The police continued to search for Ms. Munyuh after her escape. A court summons and an arrest warrant were issued for her, and her father was jailed for three days until he promised to help police find her. She provided the IJ with a copy of the arrest warrant, which identifies her as "suspected of being a member of the [SCNC]," and an affidavit from her father, who describes the harassment he suffered from the police "on the premise that [he] was intentionally refusing to disclose Mirabel's whereabouts."

Ms. Munyuh fled the country by bus to Ghana by way of Nigeria. She flew to Ecuador, and from there worked her

way north to the United States. Three months after leaving Cameroon, she entered the United States at San Ysidro, California. Lacking any valid entry documents, she was detained near San Diego.

C. Removal Proceedings

Shortly after her entry into the United States, an asylum officer determined that Ms. Munyuh had a credible fear of returning to Cameroon. After receiving a notice to appear for removal proceedings, Ms. Munyuh obtained counsel and applied for asylum and withholding of removal on the ground of imputed political opinion. The members of her family remaining in Cameroon gathered and sent her supporting documentation for her asylum application. Along with her medical report, arrest warrant, and father's affidavit, those documents also included affidavits from her husband, her neighbor, her employer, and her attorney (who was the notary for the other four affidavits) and copies of official Cameroonian records, including her marriage certificate, verification of employment, and letters from her employer documenting her absence from work. The IJ admitted those documents at the removal proceedings.

Ms. Munyuh was the sole witness at her removal hearing. On direct examination, she testified to the account above. On cross-examination, the government questioned Ms. Munyuh's timeline of events. Specifically, Ms. Munyuh testified that from Bamenda to Yaoundé is around a six- or seven-hour drive, but her written declaration attached to her asylum application had stated that the truck broke down after only four or five kilometers. If that were the case, then it would have been impossible for Ms. Munyuh to have traveled *on foot* the remaining distance to Bafia, hundreds of kilometers away, by sunrise. Ms. Munyuh responded that she had only estimated the distance the truck had traveled,

and her attorney argued that, because she had gone through a horrific day of beatings and sexual assault, it was to be expected that Ms. Munyuh had not focused at the time on the actual distance traveled.

The government questioned Ms. Munyuh about another discrepancy. During her credible-fear interview, she had testified that she did not know whether her primary-school friend was a member of SCNC, but during the removal hearing, she testified that she knew that her friend was a member. Ms. Munyuh explained that she gave that answer during her asylum interview because she was afraid.

After the government's cross-examination, the IJ continued to press Ms. Munyuh on her timeline discrepancy. Ms. Munyuh responded affirmatively to questions about whether the truck had traveled longer than an hour and longer than two hours before it broke down. When challenged on the discrepancy between her declaration's statement that the truck had gone only a few kilometers and her testimony that the truck had traveled at least two hours, Ms. Munyuh responded that she did not know how far a kilometer is. After a recess, Ms. Munyuh ultimately testified on redirect that the truck had gone about four or five hours before breaking down.

The IJ also questioned Ms. Munyuh on several other issues. After testimony that she had traveled on foot about two or three hours before she reached the phone booth, the IJ confronted her again with her asylum declaration, in which Ms. Munyuh had stated that she had run "the whole night." When asked why her estimate at the hearing was different from her estimate in the declaration, Ms. Munyuh gave no answer. The IJ also noted a discrepancy in Ms. Munyuh's testimony about her father's arrest (her testimony put his arrest one day earlier than the timeline in

his affidavit suggested) and Ms. Munyuh's testimony that her father had been shown an arrest warrant in evidence (the document in evidence had been issued the month after her father was arrested).

The IJ asked what injuries Ms. Munyuh had sustained between her arrest and escape. Ms. Munyuh had earlier testified to bruising on her back, sides, feet, and face. When asked if there were additional injuries, Ms. Munyuh added that she had a swollen vulva. The IJ asked again if there had been anything else, to which Ms. Munyuh answered no. The IJ then asked if there had been any bleeding, to which Ms. Munyuh responded affirmatively, indicating vaginal bleeding. The IJ then asked why Ms. Munyuh had not testified to the bleeding earlier, to which she had no answer.

Finally, the IJ noted that Ms. Munyuh had not shown "any emotion particularly" during her testimony about the rape. Asked why, Ms. Munyuh did not directly answer but explained: "it's not because I don't . . . I don't feel that I was being raped. I do feel it, your honor." The IJ then contrasted Ms. Munyuh's affect at the hearing with her emotions during the credible-fear interview, in which she had cried. Asked "why [she had been] able to express those emotions during the asylum officer interview" but not the hearing, Ms. Munyuh simply replied, "I don't know, your honor."

Based on the above discrepancies, the IJ made an adverse credibility determination. She also cited two additional discrepancies that she had not asked Ms. Munyuh to explain during the hearing. First, Ms. Munyuh had testified that Bafia, where she had called her husband, was "a village within Yaoundé," but her husband nevertheless took two hours to reach her. Second, Ms. Munyuh had given her initial estimates of the police truck's travel distance (in her asylum declaration) and date of her father's arrest (in testimony)

“without any hint of uncertainty” and had not shown uncertainty regarding those facts until confronted with the discrepancies at the hearing.

The IJ also gave Ms. Munyuh’s documentary evidence “minimal weight,” citing several factors. First, “no identity documents were presented for any of the affiants,” “none of the affiants were subject to cross-examination,” and one of the affiants, who was the notary for the remaining affiants, was also Ms. Munyuh’s attorney and cousin and therefore an “interested party.” Second, Ms. Munyuh could not establish a “foundation or chain of custody” for the medical report, and the report had a “strange blue square around the [letterhead] seal.” Third, the remaining documents were not purported to be originals.

The IJ concluded that Ms. Munyuh had not met her burden to prove persecution or torture. She therefore denied her application for asylum, withholding of removal, and protection under the Convention Against Torture.

D. Proceedings Before the Board

Ms. Munyuh appealed that decision to the Board, filing a brief *pro se*. (The government did not submit a brief.) Her brief addressed many of the inconsistencies raised by the IJ. She continued to insist that her original distance estimate was a mistake. She further stated that her silence or refusal to provide additional estimates in response to the government’s and IJ’s questions were because she feared making another incorrect estimate, especially because she could not remember the details with precision due to the stress surrounding the events.

The Board dismissed Ms. Munyuh’s appeal. Reviewing the IJ’s decision on findings of fact, including credibility

determinations, for clear error, the Board gave “little to no weight to some of the inconsistencies [sic]” that the IJ had cited. Those inconsistencies included the difference in Ms. Munyuh’s affect between her credible-fear interview and the removal hearing and her failure to identify vaginal bleeding as an injury she sustained before being asked expressly by the IJ. Nevertheless, the Board held that there were “significant material inconsistencies” between Ms. Munyuh’s declaration in support of her asylum application and her testimony—namely, “the locations, distances, and times she related in her accounts of her assault and escape”:

Even accepting the respondent’s explanations for the inconsistencies regarding her father’s arrest and her knowledge of her friend’s political affiliation, and her assertion that some of the inconsistencies are due to her lack of familiarity with her documents, her mental state at the time of her asylum interview, and the stress she felt when testifying, we find that the significant inconsistencies in the material aspects of her claim support an adverse credibility determination in her case. . . . Aside from any other inconsistencies [sic], we find that the discrepancies in the distances, locations, and times involved in the respondent’s claim of her assault and escape are not minor or trivial, and go to the heart of her claim. The respondent has not provided a reasonable explanation for these material discrepancies underlying her claim.

Ms. Munyuh’s timely petition for review followed.

II. Analysis

A. Standard of Review

The REAL ID Act of 2005, Pub. L. No. 109-13, div. B, 119 Stat. 231, 302, governs credibility determinations for asylum applications filed on or after May 11, 2005. *Id.* § 101(h)(2), 119 Stat. at 305. The Act provides that:

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . , and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.

Id. § 101(a)(3) (codified at 8 U.S.C. § 1158(b)(1)(B)(iii)). The same credibility-determination standard applies to applications for other relief from removal filed on or after May 11, 2005. *Id.* § 101(d)(2) (codified at 8 U.S.C. § 1230(c)(4)(C)).

We review adverse credibility determinations under the substantial-evidence standard. *Yali Wang v. Sessions*, 861 F.3d 1003, 1007 (9th Cir. 2017). This standard is a demanding one because factual findings by the agency—which include credibility determinations—“are conclusive unless [every] reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *Garland v. Ming Dai*, 141 S. Ct. 1669, 1680 (2021) (noting that we may disregard a BIA credibility finding only if “no reasonable adjudicator could have reached” it). Thus, to reverse, we “must find that the evidence not only supports [a contrary] conclusion, but compels it.” *Yali Wang*, 861 F.3d at 1007 (alteration in original) (quoting *Rizk v. Holder*, 629 F.3d 1083, 1087 (9th Cir. 2011)).

Even so, we have identified limits to the deference we owe the agency. An IJ may not “cherry pick solely facts favoring an adverse credibility determination while ignoring facts that undermine that result.” *Shrestha v. Holder*, 590 F.3d 1034, 1040 (9th Cir. 2010). The credibility determination must “be ‘reasonable’ and ‘take into consideration the individual circumstances’ of the applicant.” *Id.* at 1041 (quoting *Lin v. Mukasey*, 521 F.3d 22, 28 n.3 (1st Cir. 2008)). The factfinder must provide “more than a vague reference to the ‘totality of the circumstances’ or recitation of naked conclusions that a petitioner’s testimony was inconsistent or implausible, that the petitioner was unresponsive, or that the petitioner’s demeanor undermined the petitioner’s credibility.” *Id.* at 1042. Thus, the agency “must provide a specific cogent reason for the adverse credibility finding.” *Ibid.* (quoting *Gui v. INS*, 280 F.3d 1217, 1225 (9th Cir. 2002)). Although the REAL ID Act removed our earlier threshold limitation on the types of inconsistencies that may support an adverse credibility determination, *id.* at 1043, the record must still reasonably

support an adverse determination for us to uphold it. For example, “an utterly trivial inconsistency, such as a typographical error, will not by itself” be enough. *Ibid.*

Additionally, the Act’s requirement that inconsistencies “be considered in light of the ‘totality of the circumstances, and all relevant factors’” indicates that the agency has a duty to consider a “petitioner’s explanation for a perceived inconsistency and other record evidence that sheds light on whether there is in fact an inconsistency at all.” *Id.* at 1043–44 (quoting 8 U.S.C. § 1158(b)(1)(B)(iii)). If that explanation is “reasonable and plausible,” then the agency “must provide a specific and cogent reason for rejecting it.” *Rizk*, 629 F.3d at 1088; *see also Soto-Olarte v. Holder*, 555 F.3d 1089, 1091 (“Because the BIA’s opinion does not refer to the explanation that [petitioner] gave . . . and does not give the BIA’s reasons for considering that explanation unpersuasive, the BIA’s treatment of [petitioner’s] explanation does not satisfy our precedential requirement . . .”).

And if the agency’s decision “cannot be sustained upon its reasoning,” then “we must remand to allow the agency to decide any issues remaining in the case.” *Solorio-Ruiz v. Sessions*, 881 F.3d 733, 738 (9th Cir. 2018) (quoting *Andia v. Ashcroft*, 359 F.3d 1181, 1184 (9th Cir. 2004) (per curiam)), *abrogated in part on other grounds by Stokeling v. United States*, 139 S. Ct. 544 (2019), *as recognized by United States v. Baldon*, 956 F.3d 1115, 1121–22 (9th Cir. 2020).

B. Adverse Credibility Determination

1. Distance and Time Estimates

The primary inconsistency that the IJ identified in Ms. Munyuh's testimony regarded how far the police truck had traveled from Bamenda to Yaoundé before breaking down. In both her written declaration attached to her asylum application as well as her initial testimony on cross-examination, Ms. Munyuh stated that the truck had traveled only four to five kilometers (2.5 to 3 miles), a tiny fraction of the over-300-kilometer trip to Yaoundé. If so, then Ms. Munyuh would have traveled about 242 kilometers (150 miles) on foot to Bafia before reaching the phone booth. Even at a constant running speed of 20 kilometers per hour (12 miles per hour), an unlikely prospect, she would have needed to run for more than 12 hours straight, far more than Ms. Munyuh's estimate of two to three hours. And if Ms. Munyuh were correct that the truck had broken down very near Bamenda, then it would have taken far longer than two or three hours for her husband to reach her.

Confronted with this discrepancy, Ms. Munyuh stated that she had estimated her original distance because she was not sure how far the truck had gone. Pressed further on the issue, she testified that she did not know how far a kilometer is. She later agreed that the truck had traveled "longer than an hour" and "longer than two hours" in response to the IJ's questions, and on redirect testified that the drive lasted "about four to five hours."¹

¹ On this point, the IJ made findings with which no reasonable factfinder could agree. She found Ms. Munyuh's testimony that "the truck had traveled over two hours" to conflict with her earlier estimate

In closing, her counsel argued that “considering the harm and trauma that [she] suffered, it w[ould] be highly unlikely that [she] would remember precisely everything that happened to her.” And rebutting the government’s closing argument, her counsel noted that it is “extremely reasonable” that she would have been wrong about how far the truck had traveled because she had been “brutally attacked, beaten multiple times, [and] raped within a span of less than about 24 hours.”

The IJ stated in her oral decision that the inconsistencies were not “adequately explained to establish why [Ms. Munyuh] gave an initial estimate without any hint of uncertainty in her declaration, and then deferring estimates each time coming closer to rectifying the implausibility.” The IJ also found that Ms. Munyuh had failed to explain “the implausibility that she was raped near Bamenda and was rescued by her husband within two hours given that at the time she escaped she would have been six to seven hours by vehicle from Yaoundé based on her initial estimation.”

that it had traveled “over an hour.” And she found Ms. Munyuh’s redirect testimony that “the truck [had] traveled approximately four to five hours before breaking down” to be “clearly in conflict with each of [Ms. Munyuh]’s prior estimations.”

But these time estimates are all consistent with each other. Indeed, assuming the truck really had traveled for four to five hours, Ms. Munyuh had no other choice but to give those answers. The IJ asked her if the truck had traveled more or less than an hour, to which Ms. Munyuh said more than an hour. Then the IJ asked whether the truck had traveled at least two hours, to which Ms. Munyuh answered in the affirmative.

No reasonable factfinder could find those two statements to conflict with Ms. Munyuh’s later testimony that the truck traveled for four to five hours. The IJ’s contrary finding is therefore unsupported by substantial evidence.

Although the IJ acknowledged that Ms. Munyuh had said she was only estimating, the IJ focused on the fact that Ms. Munyuh had not shown any uncertainty until the government identified the inconsistency on cross-examination.

For its part, the Board agreed that, “[a]side from any other inconsistencies [sic], . . . the discrepancies in the distances, locations, and times involved in the respondent’s claim of her assault and escape are not minor or trivial, and go to the heart of her claim.” The Board concluded that she had “not provided a reasonable explanation for these material discrepancies underlying her claim.”

We disagree. Ms. Munyuh set forth a reasonable and plausible explanation for the discrepancy between the four-to-five-kilometer estimate in her written declaration and the timeline of her account—namely, that she had been “brutally attacked, beaten multiple times, [and] raped within a span of less than about 24 hours.” It is reasonable and plausible that the trauma caused by multiple physical and sexual assaults would impair Ms. Munyuh’s focus at the time on peripheral matters and therefore on her memory of those matters. We have recognized more than once that “[s]exual abuse commonly results in ‘severe and long-lasting’ effects, including ‘avoidance of situations that trigger memories of the violation, profound feelings of shame, [and] *difficulty remembering events.*’” *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1070–71 (9th Cir. 2017) (en banc) (second alteration in original) (emphasis added) (quoting *Lopez-Galarza v. INS*, 99 F.3d 954, 962 (9th Cir. 1996) (quoting Shana Swiss & Joan E. Giller, *Rape as a Crime of War: A Medical Perspective*, 270 J. Am. Med. Ass’n 612, 614 (1993))).

Ms. Munyuh's basic account is not inherently incredible or internally inconsistent (and is strongly supported by the corroborating evidence she provided). For one thing, any distance given would necessarily be an estimate or guess, as Ms. Munyuh was presumably not sitting in front of an odometer during the trip. Her timeline makes perfect sense if one accepts her entirely plausible explanation that she did not actually know the distance traveled and relies instead on her estimate at the hearing that she spent "about four to five hours," not four to five kilometers, on the road. Had Ms. Munyuh traveled about four to five hours by truck, the breakdown would have occurred roughly one-half to three-quarters of the distance between Bamenda and Yaoundé. That range comfortably encompasses Bafia, which is about 65% of the way from Bamenda to Yaoundé, and the 10 to 15 kilometers she would have needed to travel on foot to reach Bafia within two or three hours² is also well within that

² The IJ also erroneously faulted Ms. Munyuh's testimony on this point:

The respondent then testified that she did not rest or sleep at all during the time that she traveled to the phone booth and that she had run or walked for two to three hours during that time. This very testimony is in conflict with itself in that she testified that she did not stop or rest but also that she traveled walking or running only for two to three hours of that time. Additionally, it conflicts with remaining testimony in that the respondent indicated that this estimate of time during which she was walking or running, she had reached prior to her merits hearing. The court then asked if she had reached this estimate prior to the merits hearing why her declaration indicated that she ran the whole night? The court also noted that her testimony to the asylum officer had been similar in nature in that she had claimed to the asylum officer that she had to "find her way through all night"

range. And Bafia is about a two-to-three-hour drive from Yaoundé, matching both her testimony and her husband's affidavit, which declared that he picked her up about two hours after getting her call.

Although the IJ argued that Ms. Munyuh had not expressed uncertainty in her estimates until the government highlighted the distance inconsistency in cross-examination, that reasoning is not a cogent refutation of Ms. Munyuh's explanation. It does not address that a sexual-assault victim might have an honest yet mistaken belief about the timeline surrounding the assault. In this case, assuming that Ms. Munyuh was telling the truth about being beaten and sexually assaulted, it is certainly plausible that she was not focused in the interim on the distance she was traveling and therefore did not form a recoverable direct memory of that distance, even as a ballpark figure. In attempting to recall

following her escape. When presented with this inconsistency the respondent could not provide any explanation whatsoever for the discrepancy.

We do not understand the IJ's finding that Ms. Munyuh's testimony "is in conflict with itself" because she said she did not stop to rest. We find nowhere in the record that Ms. Munyuh testified that she stopped, so we do not see how her testimony is self-contradictory.

And there is no timeline discrepancy between "the whole night" and "two to three hours." Assuming that Ms. Munyuh's testimony that the truck left Bamenda around 9:00 p.m. and that it traveled four to five hours before breaking down is correct, it would have been about 2:00 a.m. to 3:00 a.m. when the truck broke down. And sunrise in Bafia that day was at 6:09 a.m. See Nat'l Oceanic & Atmospheric Admin., *ESRL Global Monitoring Laboratory*, <https://gml.noaa.gov/grad/solcalc> (last visited July 27, 2021) (enter "4.7078283" for latitude and "11.25" for longitude, and set the date to July 8, 2018). When Ms. Munyuh escaped, "the whole night" remaining was quite literally about "two to three hours."

those events afterwards, she could well have honestly, but mistakenly, deduced that the truck broke down shortly after leaving the Bamenda detention center. As the IJ noted, Ms. Munyuh appeared to show uncertainty only after being pressed on the time discrepancy. Such belated uncertainty is consistent with the explanation that Ms. Munyuh honestly held a mistaken belief. And, as we have already said, memory problems manifest commonly in sexual-assault survivors. Ms. Munyuh's lack of expressed uncertainty before being pressed on cross-examination is not a convincing reason to reject her explanation.³

The last timeline inconsistency identified by the IJ, that it did not make sense that it would have taken Ms. Munyuh's husband two hours to reach Bafia because Bafia was "a village within Yaoundé," is unsupported by substantial evidence. Ms. Munyuh testified only that Bafia is "a village in Yaoundé already, the outskirts of where my husband lives in Yaoundé." There is no other record evidence about Bafia's distance from Yaoundé from which the IJ could conclude that the timeline was off. Looking at a map, we can see that Bafia is about 130 kilometers (about 81 miles) from

³ Alternatively, Ms. Munyuh may have been generally aware of the time it took to travel, but mistakenly substituted "kilometers" for "hours" in her declaration, in which she claimed to have traveled "4–5km." Although Ms. Munyuh is an anglophone, her native language is Moghamo, and her application for asylum lists "Pidgin English" as the other language she speaks fluently. There is nothing in the record to refute her explanation that she did not know what a "kilometer" is, and neither the IJ nor the Board addressed that explanation. And that misunderstanding would also explain her certainty before cross-examination—she would have had no reason to believe that her estimate was off.

Yaoundé, consistent with the two-hour drive time both Ms. Munyuh and her husband described.

But even if Bafia had been closer, as the IJ believed, there could have been any number of reasons why Ms. Munyuh's husband might have taken two hours to reach the village—car trouble, a police blockade, etc. The IJ never asked for an explanation, and she was required to. *Soto-Olarte*, 555 F.3d at 1092 (An IJ “must provide a petitioner with a reasonable opportunity to offer an explanation of any perceived inconsistencies that form the basis of a denial of asylum.” (quoting *Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007))). Had she done so, perhaps Ms. Munyuh could have clarified what she meant by “outskirt” of Yaoundé, resolving this discrepancy at the hearing.

2. Other Inconsistencies

As noted above, the Board did not rely on any other purported inconsistencies that the IJ identified. It expressly disavowed two of them, and correctly so. No one can be reasonably expected to have the same emotional state every time she recounts a traumatic event in her life, especially on two different occasions, months apart and under different circumstances. And it is unreasonable to believe that Ms. Munyuh deliberately waited until after the IJ asked her about her injuries several times, only to reveal belatedly that she had experienced bleeding. Rather, Ms. Munyuh's explanation, that had she understood her answer about the swelling in her genital region to encompass bleeding in that area, makes sense, especially given that English is not her native language. (Indeed, there are multiple instances in the record where it is apparent that she either misuses certain words or at least uses them in differently than an American English-speaker would.)

The IJ’s reliance on these “discrepancies” and the IJ’s statement that Ms. Munyuh’s affect was “greatly concerning and cause[d] the court to doubt the genuineness of the emotion expressed” do not give us great faith in the IJ’s judgment—our sense is that she was badgering Ms. Munyuh instead of seeking the truth. The REAL ID Act requires deference to the IJ “because IJs are in the best position to assess demeanor and other credibility cues that we cannot readily access on review,” *Shrestha*, 590 F.3d at 1041, and an IJ “is, by virtue of his [or her] acquired skill, uniquely qualified to decide whether an alien’s testimony has about it the ring of truth,” *ibid.* (alteration in original) (quoting H.R. Rep. No. 109–72, at 167). “But deference does not mean blindness.” *Li v. Ashcroft*, 356 F.3d 1153, 1158 (9th Cir. 2004). The IJ here relied on many invalid reasons to discount Ms. Munyuh’s testimony, including the two specifically disavowed by the BIA and other purported inconsistencies that were not supported by substantial evidence. *See supra* notes 1–2. Although we hold that the IJ committed legal error in failing to give specific, cogent reasons for rejecting Ms. Munyuh’s plausible explanations for the remaining discrepancies, we note that this particular IJ’s flawed reasoning on so many issues undercuts our confidence that she was “uniquely qualified” to assess the truth of Ms. Munyuh’s testimony as a whole and that her findings deserve deference.

The Board relied only on the time and distance discrepancies discussed earlier to affirm the IJ. Other than disavowing the two findings discussed in the previous section of this opinion, it did not rule on any other alleged inconsistencies. The Board may revisit those on remand.

C. Ms. Munyuh's Documentation

Ms. Munyuh also challenges the IJ's decision to discount her documentation. We agree with her—the IJ committed legal error by discounting them without giving her an opportunity to provide corroborative evidence.

Unlike in many immigration cases we see, the affidavits Ms. Munyuh filed were of high quality. They are signed, notarized, and in English. The affidavits bear the affiants' Cameroonian national identity card numbers as well as their cities of residence. And the affidavits do not give boilerplate, uniform accounts—they contain different information, consistent with what each affiant would likely know, and all of which together confirm the general contours of Ms. Munyuh's account. Yet the IJ discounted these documents because Ms. Munyuh did not present the affiants' ID cards, because the affiants were not subject to cross-examination, and because the attorney who notarized the documents was Ms. Munyuh's cousin and therefore an "interested party."

But the IJ did not ask Ms. Munyuh for the affiants' ID cards until the hearing started, and she never asked her to produce the affiants to testify and be cross-examined. The affiants provided their national ID card numbers and the dates and locations the cards were issued in their declarations. (From the record, it seems as though the IJ wanted *original* ID cards, though the affiants would reasonably want to keep their original ID cards in Cameroon.) Ms. Munyuh's attorney represented that he could have gotten copies of the ID cards if he had known to ask for them, and he noted on the record that he had only recently received the documents. The IJ therefore erred by failing to give Ms. Munyuh adequate notice that she was required to present such corroborative evidence and the

opportunity either to obtain it or explain why it was unavailable. See *Ai Jun Zhi v. Holder*, 751 F.3d 1088, 1094–95 (9th Cir. 2014).

We also note that, given the opportunity to present additional evidence, Ms. Munyuh may also be able to quell the IJ’s fears about the medical report’s chain of custody—for example, if her husband testifies or provides a supplementary affidavit. And the IJ’s concern that the notary was Ms. Munyuh’s cousin went only to whether the attorney-notary-cousin would have sufficiently verified the affiants’ identities. (Of course, that does not make sense for the affiants who were also part of Ms. Munyuh’s family.) But we think that concern could have been resolved had Ms. Munyuh been allowed to verify those identities by other means.

As for the IJ’s concerns about a “strange blue square” around the medical report’s letterhead seal, we note that this square does not appear in the copies of the certified administrative record that we received. And there were no other indications that the document was falsified—in fact, the IJ expressly noted during the hearing that “it does appear to have an original stamp and an original signature” and *declined* to find the document to be falsified. Substantial evidence does not support discounting the medical report’s weight based solely on a printing artifact in its letterhead.

The IJ’s error in discounting these documents is also relevant to the ultimate determination of Ms. Munyuh’s credibility. An IJ must consider “other record evidence that sheds light on whether there is in fact an inconsistency” in a petitioner’s explanation. *Shrestha*, 590 F.3d at 1044. Here, Ms. Munyuh’s neighbor corroborates her testimony that she was beaten by the military men who came to arrest her on the morning of July 7, 2018. Her husband corroborates her

testimony that she called him from Bafia the next morning, he picked her up from there two hours later, and she was severely injured when he arrived. The medical report gives a detailed analysis of Ms. Munyuh's physical condition directly after her ordeal, including evidence of severe bruising across her body, swelling and loss of function in her feet, and "signs of forceful vaginal penetration." These documents all strongly support Ms. Munyuh's account of what happened to her.

III. Conclusion

Ms. Munyuh's case concerns us. From our reading of the record, the IJ seemed determined to pick every nit she could find. Besides erring procedurally, the IJ discounted probative evidence on flimsy grounds and displayed a dubious understanding of how rape survivors ought to act. Although we give great deference to the IJ as factfinder, substantial-evidence review does not require us to credit the credibility finding of an IJ who cherry-picks from—or misconstrues—the record to reach it. The IJ must consider the "totality of the circumstances, and *all* relevant factors." 8 U.S.C. § 1158(b)(1)(B)(iii) (emphasis added).

At the very least, the two legal errors we have identified warrant remand. The IJ erred by failing to give specific, cogent reasons for rejecting Ms. Munyuh's reasonable, plausible explanations for the discrepancies tied to her declaration that the police truck broke down after only four or five kilometers. And she further erred by discounting the supporting documentation without giving Ms. Munyuh adequate notice and opportunity to provide corroborative evidence. We therefore vacate the removal order and remand

the case to the Board for further proceedings consistent with this opinion.

**PETITION GRANTED; VACATED and
REMANDED.**