

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 10 2023

FOR THE NINTH CIRCUIT

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

Roseline Dieu Seul,

Petitioner,

v.

Merrick B. Garland, U.S. Attorney
General,

Respondent.

No. 21-674

Agency No. A209-871-974

MEMORANDUM*

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

Submitted March 8, 2023**
Pasadena, California

Before: CALLAHAN, FORREST, and H.A. THOMAS, Circuit Judges.

Roseline Dieu Seul, a native and citizen of Haiti, petitions for review of a Board of Immigration Appeals (BIA) order that affirmed an Immigration Judge's (IJ) denial of Dieu Seul's applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). The BIA determined that Dieu Seul failed to establish eligibility for relief from removal

* 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).

because she was not credible and she failed to establish that she would be tortured if removed to Haiti. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition.

1. Dieu Seul challenges the IJ's admission of her border interview (Form I-213) and the Record of Sworn Statement in Administrative Proceedings, claiming that they were not properly authenticated. Dieu Seul, however, failed to present any evidence beyond speculation that the person who signed the certification stamp was not authorized under 8 C.F.R. § 1287.6(a). Further, the admission of these documents was probative and their admission was fundamentally fair. *See Sanchez v. Holder*, 704 F.3d 1107, 1109 (9th Cir. 2012) (outlining that “[t]he sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair” (alteration in the original) (citation omitted)). Dieu Seul does not dispute the accuracy of the documents, and, when asked, admitted to telling the border agent that she had no fear of returning to Haiti. Furthermore, the IJ considered Dieu Seul's objections and gave the documents the appropriate weight. *See* 8 C.F.R. § 1240.7(a). Accordingly, Dieu Seul has not met her “burden of establishing a basis for exclusion [of these documents] . . . with enough negative factors to persuade the court not to admit [them].” *Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995).

2. Dieu Seul challenges the IJ's adverse credibility finding, arguing that it was not supported by substantial evidence. Specifically, she argues that,

as a newly arriving alien, her statements to the border agent did not include every detail of her persecution; that the discrepancies in dates and ages have no bearing on her credibility and were minor; and that the IJ's demeanor findings did not specifically refer to the non-credible aspects of her demeanor. We review the agency's decision for substantial evidence and may not reverse "unless any reasonable adjudicator would be compelled to conclude to the contrary." *Iman v. Barr*, 972 F.3d 1058, 1064 (9th Cir. 2020) (quoting *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1184 (9th Cir. 2016)).

The IJ's adverse credibility finding was supported by Dieu Seul's inconsistent statements with regard to whether she had a fear of returning to Haiti. This inconsistency was not an omission of mere detail but rather the sole basis of her asylum claim and was "of great weight." *Shrestha v. Holder*, 590 F.3d 1034, 1047 (9th Cir. 2010). Additionally, minor inconsistencies have a bearing on a petitioner's credibility. *Id.* at 1043 n.4. While inconsistencies as to dates generally are considered trivial, *see Ren v. Holder*, 648 F.3d 1079, 1086 (9th Cir. 2011), Dieu Seul's discrepancies with regard to whether she left Haiti when she was 14 or 24 were significant, *see Don v. Gonzales*, 476 F.3d 738, 741 (9th Cir. 2007) (noting that the petitioner's inability to state when he began employing the man that led him to flee his country "went to the heart" of his claim). Finally, the IJ's demeanor finding references specific aspects of Dieu Seul's demeanor, which called her credibility into question. *See Manes v.*

Sessions, 875 F.3d 1261, 1264 (9th Cir. 2017) (per curiam). The adverse credibility finding was supported by substantial evidence.

3. Dieu Seul challenges the denial of CAT relief, arguing that it was “erroneous based upon the documentary evidence submitted.” However, she does not point to any documentary evidence that shows it is more likely than not that she will be tortured in Haiti. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir.2003).

PETITION DENIED.