

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 9 2022

FOR THE NINTH CIRCUIT

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

FENGXIA WEI,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 21-70175

Agency No. A206-574-006

MEMORANDUM\*

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

Submitted November 16, 2022\*\*  
San Francisco, California

Before: McKEOWN and KOH, Circuit Judges, and SESSIONS,\*\*\* District Judge.

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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).

\*\*\* The Honorable William K. Sessions III, United States District Judge for the District of Vermont, sitting by designation.

Fengxia Wei petitions for review of the Board of Immigration Appeals’ (“BIA”) final removal order affirming an Immigration Judge’s (“IJ”) denial of her motion to terminate removal proceedings and her application for asylum, withholding of removal, and voluntary departure. We have jurisdiction under 8 U.S.C. § 1252. We deny the petition in part and dismiss in part. Because the parties are familiar with the facts, we need not recount them here.

The IJ did not err in concluding that Wei failed to establish her eligibility for asylum or withholding of removal. The IJ’s adverse credibility finding was supported by substantial evidence and therefore deserves deference. “[F]alsehoods and fabrications weigh particularly heavily in the adverse credibility inquiry.” *Kumar v. Garland*, 18 F.4th 1148, 1155 (9th Cir. 2021). The IJ permissibly considered that Wei had submitted false information in her visa application and that Wei’s household registration contained several falsities. *See Singh v. Holder*, 643 F.3d 1178, 1181 (9th Cir. 2011) (noting that volitional lies to immigration officials will support an adverse credibility finding except in the “strictly limited instances” in which a “genuine refugee” lies to flee a place of persecution) (citation omitted). These findings were both supported by substantial evidence and were sufficient to support the adverse credibility finding. *See Li v. Garland*, 13 F.4th 954, 960 (9th Cir. 2021) (“Even though the discrepancies regarding Li’s treatment in jail and her husband’s employment are not necessarily probative of Li’s lack of

veracity, her submission of false information in her asylum and visa applications are inconsistencies sufficient to support the adverse credibility determination.”).

The IJ’s determination that Wei failed to rehabilitate her credibility with sufficient corroborating evidence was also supported by substantial evidence. The IJ identified specific, cogent reasons to doubt the authenticity of Wei’s letters of support and the photographs of her injuries. *See Lai v. Holder*, 773 F.3d 966, 970 (9th Cir. 2014). Contrary to Wei’s assertion, because the IJ found Wei not credible, the IJ did not have to notify Wei that her corroborating evidence fell short. *See Mukulumbutu v. Barr*, 977 F.3d 924, 927 (9th Cir. 2020). Since the IJ found that Wei was not credible and that she had failed to rehabilitate her credibility, the IJ did not err in finding that Wei had failed to establish her eligibility for asylum or withholding of removal.

Nor did the IJ err in denying Wei voluntary departure. Because Wei testified that she was not willing to return to China, it was reasonable for the IJ to determine that Wei had not established her intent to depart the United States. *See* 8 U.S.C. § 1229c(b)(1)(D).

Furthermore, the BIA did not err in denying Wei’s due process claim. Wei argues that she did not understand her interpreter and that the BIA impermissibly withheld the audio recording of her IJ hearing, which the BIA relied upon, but neither argument warrants relief. Wei could have identified translation errors in

the transcript, but she did not. Nor did she specify how the alleged difficulty communicating prejudiced her. Wei also failed to state a claim due to IJ bias. “[I]f the factual record adequately supports the denial of [a noncitizen’s] application for relief, we cannot find that the alleged bias held by the IJ was the basis for the denial of the application.” *Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 926 (9th Cir. 2007).

Finally, as the BIA noted, Wei withdrew her claim for protection under the Convention Against Torture (“CAT”) at her hearing before the IJ. Because she failed to exhaust this claim before the agency, we lack jurisdiction to review it here. *See Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004) (“[E]xhaustion of administrative remedies is a prerequisite to our jurisdiction.”).

**PETITION DENIED IN PART AND DISMISSED IN PART.**