

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 5 2024

FOR THE NINTH CIRCUIT

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

LITING HE,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 23-775

Agency No.  
A200-266-221

MEMORANDUM\*

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

Submitted April 3, 2024\*\*  
Pasadena, California

Before: R. NELSON, VANDYKE, and SANCHEZ, Circuit Judges.

Liting He, a practicing Christian, is a native and citizen of China. She petitions for review of a Board of Immigration Appeals' (BIA) decision. The BIA dismissed Petitioner's appeal from an Immigration Judge's decision denying

---

\* 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).

applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252. *See Pinto v. Holder*, 648 F.3d 976, 986 (9th Cir. 2011) (BIA’s decision that denied “asylum, withholding of removal, and protection under CAT . . . was a final order of removal” under 8 U.S.C. § 1252). We review the agency’s legal conclusions de novo and its factual findings for substantial evidence. *See Davila v. Barr*, 968 F.3d 1136, 1141 (9th Cir. 2020). Under the latter standard, the “administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B). We deny the petition.

1. Substantial evidence supports the adverse credibility determination. A trier of fact may base an adverse credibility determination on the “totality of the circumstances,” including “the inherent plausibility of the applicant’s or witness’s account, the consistency between the applicant’s or witness’s [sworn] written and oral statements . . . , 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.” 8 U.S.C. § 1158(b)(1)(B)(iii). “[E]ven minor inconsistencies may have a legitimate impact” on credibility, *Li v. Garland*, 13 F.4th 954, 961 (9th Cir. 2021), and we give special deference to an immigration judge’s demeanor assessments, *Ling Huang v. Holder*, 744 F.3d 1149, 1153 (9th Cir. 2014). We can only reverse an adverse finding if Petitioner shows

that “any reasonable adjudicator would be compelled to do so.” *Aguilar Fermin v. Barr*, 958 F.3d 887, 892 (9th Cir. 2020) (internal punctuation and citation omitted).  
Petitioner has not crossed that high bar.

The immigration judge found that Petitioner lacked credibility for three independently sufficient reasons. *First*, Petitioner was inconsistent when she testified. She testified that the church she attended in China both did and did not keep attendance records. Other inconsistencies abound. Undated and unnotarized letters from Petitioner’s mother arrived both from mainland China and from Taiwan, even though Petitioner testified that her mother has never been to Taiwan. And Petitioner’s documentary evidence related to her membership in a Los Angeles church included information that contradicted Petitioner’s testimony.

*Second*, Petitioner’s testimony contained omitted facts that “directly relate to incidents of harm that undergird her entire claim of past persecution.” Despite providing a written declaration stating that she had been interrogated and beaten up by the police, Petitioner testified at the hearing that, after she was arrested in China, her only contact with the police was when they released her and that “nothing” happened to her while in custody. When confronted with this discrepancy, she stated that she had been “too nervous to recall” what the police had done. Substantial evidence supports the immigration judge’s refusing to look past that material omission because of Petitioner’s alleged nervousness. It strains credulity to argue

that Petitioner was too nervous to remember being beaten in prison while “she was able to provide specific details such as dates.”

*Third*, Petitioner’s demeanor was unconvincing. *See Ling Huang*, 744 F.3d at 1153–54 (“The need for deference is particularly strong in the context of demeanor assessments.”). At times she was nervous and quiet, but at other times she remembered details with perfect specificity, such as particular dates and details about the number of congregants at her church in China. The immigration judge found that these “seemingly rehearsed” details “cast[] a dark shadow” on Petitioner’s credibility.

The record supports each of these findings, and we decline Petitioner’s invitation to reverse them.

2. Substantial evidence supports the decision to deny asylum and not to withhold removal. As to asylum, because “substantial evidence supports the Agency’s adverse credibility determination, [Petitioner] has failed to establish past persecution” or a “well-founded fear of future persecution.” *Lalayan v. Garland*, 4 F.4th 822, 840 (9th Cir. 2021). And because asylum is a lower standard than the withholding-of-removal standard, failure to establish eligibility for asylum is necessarily failure to satisfy the withholding standard. *Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

3. Petitioner’s CAT claim also fails. She had the burden of showing that it was “more likely than not that . . . she would be tortured if removed to” China. 8 C.F.R. § 1208.16(c)(2). She has not carried that burden. Instead, in just a paragraph, she makes passing references to the relevant standard without explaining why the IJ erred. But once the adverse credibility finding discounts her testimony, her claim boils down to a single line about the U.S. Department of State Country Condition Report and International Religious Freedom Report. That is not enough. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (evidence of generalized country conditions insufficient to show a particularized threat under CAT).

4. Petitioner failed to exhaust before the BIA her claim that the evidence she provided corroborated her testimony notwithstanding the adverse credibility finding. She cannot overcome that failure by raising that issue here, particularly as the government has addressed her failure to exhaust in its brief. *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023) (exhaustion, though not jurisdictional, is a mandatory claim-processing rule when the government raises it).

The petition for review is **DENIED**.