



Bahadur v. Gonzales

2007 | Cited 0 times | Ninth Circuit | July 20, 2007

NOT FOR PUBLICATION

MEMORANDUM¹

Submitted July 9, 2007²

Before: LEAVY, THOMAS, and BERZON, Circuit Judges.

Tika Bahadur, a native and citizen of Nepal, petitions for review of a Board of Immigration Appeals ("BIA") decision affirming the ruling of an Immigration Judge ("IJ") denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252.

Where, as here, the BIA adopts the decision of the IJ, we review the IJ's decision as if it were that of the BIA. See *Hoque v. Ashcroft*, 367 F.3d 1190, 1194 (9th Cir. 2004). We review for substantial evidence, *Baballah v. Ashcroft*, 367 F.3d 1067, 1073 (9th Cir. 2004), and we grant the petition in part, deny it in part, and remand.

Substantial evidence does not support the IJ's adverse credibility determination. First, any inconsistencies between Bahadur's testimony and application were minor in nature, and did not go to the heart of his claim. See *Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001). Second, inconsistent statements made at an asylum interview cannot support an adverse credibility finding where the asylum officer fails to testify at the hearing. See *Singh v. Gonzales*, 403 F.3d 1081, 1087-90 (9th Cir. 2005). Third, the IJ's demeanor finding is not supported because it did not identify specific examples of evasiveness or nonresponsiveness. See *Arulampalam v. Ashcroft*, 353 F.3d 679, 686 (9th Cir. 2003). Fourth, because Bahadur submitted ample documentation of his identity, his identity is not in question, and his failure to present a passport does not support an adverse credibility determination. Cf. *Singh-Kaur v. INS*, 183 F.3d 1147, 1152-53 (9th Cir. 1999). Finally, in the absence of any supported adverse credibility findings, Bahadur cannot be required to submit corroborating evidence. See *Ladha v. INS*, 215 F.3d 889, 901 (9th Cir. 2000).

The IJ found that, even if Bahadur's testimony were credible, he would not qualify for CAT relief. Substantial evidence supports this finding because Bahadur did not establish that it was more likely than not that he would be tortured if he returned to Nepal. See *Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).



Bahadur v. Gonzales

2007 | Cited 0 times | Ninth Circuit | July 20, 2007

Accordingly, we remand for further proceedings consistent with this disposition. See *INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam).

PETITION GRANTED in part, DENIED in part, and REMANDED.

1. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.
2. This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

