



## Ou v. Sessions

2018 | Cited 0 times | Second Circuit | May 1, 2018

16-2884 Ou v. Sessions BIA Loprest, IJ A201 128 205

### UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT=S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals 2 for the Second Circuit, held at the Thurgood Marshall 3 United States Courthouse, 40 Foley Square, in the City of 4 New York, on the 1st day of May, two thousand eighteen. 5 6 PRESENT: 7 BARRINGTON D. PARKER, 8 RAYMOND J. LOHIER, JR., 9 CHRISTOPHER F. DRONEY, 10 Circuit Judges. 11

12 13 QIJUN OU, 14 Petitioner, 15 16 v. 16-2884 17 NAC 18 JEFFERSON B. SESSIONS III, 19 UNITED STATES ATTORNEY GENERAL, 20 Respondent. 21 22 23 FOR PETITIONER: Gerald Karikari, New York, NY. 24 25 FOR RESPONDENT: Chad A. Readler, Acting Assistant 26 Attorney General; Carl McIntyre, 27 Assistant Director; Brooke M. 28 Maurer, Trial Attorney, Office of 29 Immigration Litigation, United 30 States Department of Justice, 31 Washington, DC.

1 UPON DUE CONSIDERATION of this petition for review of a

2 Board of Immigration Appeals ("BIA") decision, it is hereby

3 ORDERED, ADJUDGED, AND DECREED that the petition for review

4 is DENIED.

5 Petitioner Qijun Ou, a native and citizen of the People's

6 Republic of China, seeks review of a July 29, 2016, decision



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7 of the BIA affirming an April 17, 2015, decision of an  
8 Immigration Judge (“IJ”) denying Ou’s application for asylum,  
9 withholding of removal, and relief under the Convention  
10 Against Torture (“CAT”). In re Qijun Ou, No. A 201 128 205  
11 (B.I.A. July 29, 2016), aff’g No. A 201 128 205 (Immig. Ct.  
12 N.Y. C . Apr. 17, 2015). We assume the parties’ familiarity  
13 with the underlying facts and procedural history in this case.  
14 Under the circumstances of this case, we have reviewed  
15 both the IJ’s and BIA’s decisions. Yun-Zui Guan v.  
16 Gonzales, 432 F.3d 391 , 394 (2d Cir. 2005). The applicable  
17 standards of review are well established. See 8 U.S.C.  
18 § 1252(b)(4)(B); Xiu Xia Lin v. Mukasey, 534 F.3d 162 , 165-  
19 66 (2d Cir. 2008)(per curiam).  
20 The agency may, “[c]onsidering the totality of the  
21 circumstances,” base a credibility finding on an asylum  
22 applicant’s “demeanor, candor, or responsiveness” and any  
23 inconsistencies and omissions in his testimony,  
2  
1 application, and documentary evidence. 8 U.S.C.  
2 § 1158(b)(1)(B)(iii); see also Xiu Xia Lin, 534 F.3d at  
3 163-64, 167. “We defer . . . to an IJ’s credibility



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4 determination unless . . . it is plain that no reasonable  
5 fact-finder could make such an adverse credibility ruling.”  
6 Xiu Xia Lin, 534 F.3d at 167; see 8 U.S.C. § 1252(b)(4)(B).  
7 Here, substantial evidence supports the agency’s  
8 determination that Ou was not credible.  
9 The agency reasonably relied on discrepancies regarding  
10 the length of Ou’s detention and his medical treatment.  
11 8 U.S.C. § 1158(b)(1)(B)(iii). Ou’s testimony that he was  
12 detained for three days contradicted his testimony that he  
13 was detained from December 25 until December 31 (a total of  
14 six days). The agency was not required to accept Ou’s  
15 explanation that his medical condition resolved this  
16 inconsistency given that his medical records reflected only  
17 that he was diagnosed with a respiratory infection, “fever  
18 [,] and cough,” and did not mention that Ou was  
19 unconscious. See Xiu Xia Lin, 534 F.3d at 166-167, 166 n.3  
20 (noting that “an inconsistency and an omission  
21 are . . . functionally equivalent” for credibility  
22 purposes); *Majidi v. Gonzales*, 430 F.3d 77, 80 (2d Cir.  
23 2005) (“A petitioner must do more than offer a plausible



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1 explanation for his inconsistent statements to secure  
2 relief; he must demonstrate that a reasonable fact-finder  
3 would be compelled to credit his testimony.” (quotation  
4 marks omitted)).

5 Ou now argues that the English translations of his  
6 medical records are incomplete and unreliable. But Ou did  
7 not raise this issue before the BIA, and it is therefore  
8 unexhausted. *Foster v. U.S. INS*, 376 F.3d 75 , 78 (2d Cir.  
9 2004) (requiring the “petitioner to raise issues to the BIA  
10 in order to preserve them for judicial review”). Moreover,  
11 because Ou has the burden of proof and and he introduced the  
12 medical records and translations into evidence, it was his  
13 responsibility to ensure that his own translations were  
14 accurate. See 8 U.S.C. § 1158(b)(1)(B)(i).

15 As the Government argues, Ou has waived any further  
16 review because he does not challenge any other bases for  
17 the agency’s adverse credibility ruling. See *Shunfu Li v.*  
18 *Mukasey*, 529 F.3d 141 , 146 (2d Cir. 2008). Moreover, our  
19 review of the record reveals no basis for challenging the  
20 IJ’s negative demeanor finding, given the lack of detail  
21 and responsiveness in Ou’s testimony. *Li Hua Lin v. U.S.*



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22 Dep't of Justice, 453 F.3d 99 , 109 (2d Cir. 2006) (granting

23 particular deference to credibility findings based on

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1 applicant's demeanor).

2 Given the multiple discrepancies, only two of which Ou

3 challenges, as well as the negative demeanor finding, the

4 totality of the circumstances supports the agency's ruling.

5 Xiu Xia Lin, 534 F.3d at 166-67. Contrary to Ou's

6 position, because asylum, withholding of removal, and CAT

7 relief were all based on the same factual predicate, the

8 adverse credibility determination is dispositive. Paul v.

9 Gonzales, 444 F.3d 148 , 156-57 (2d Cir. 2006); see also

10 Siewe v. Gonzales, 480 F.3d 160 , 170 (2d Cir. 2007).

11 For the foregoing reasons, the petition for review is

12 DENIED. As we have completed our review, any stay of removal

13 that the Court previously granted in this petition is VACATED,

14 and any pending motion for a stay of removal in this petition

15 is DISMISSED as moot.

16 FOR THE COURT: 17 Catherine O'Hagan Wolfe, Clerk of Court

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