CITATION QUICK-SHEET

CREDIBILITY

- See Hong Fei Gao v. Sessions, 891 F.3d 67, 78 (2d Cir. 2018) (internal citations omitted) ("[O]missions are less probative of credibility than inconsistencies created by evidence and testimony.").
- "In the immigration context, in assessing the probative value of the omission of certain facts, an IJ should consider whether those facts are ones that a credible [respondent] would reasonably have been expected to disclose under the relevant circumstances." Hong Fei Gao v. Sessions, 891 F.3d 67, 78–79 (2d Cir. 2018).
- See Hong Fei Gao v. Sessions, 891 F.3d 67, 77 (2d Cir. 2018) ("[A]lthough IJs may rely on non-material omissions and inconsistencies, not all omissions and inconsistencies will deserve the same weight.")
- See Hong Fei Gao v. Sessions, 891 F.3d 67, 77 (2d Cir. 2018) ("A trivial inconsistency or omission that has no tendency to suggest a [respondent] fabricated his or her claim will not support an adverse credibility determination.").
- See Lianping Li v. Lynch, 839 F.3d 144, 150 (2d Cir. 2016) (per curiam) (quoting Pavlova, 441 F.3d at 90) ("[A]sylum applicants are not required to list every incident of persecution on their I–589 statement.")
- Xiu Xia Lin v. Mukasey, 534 F.3d 162, 167 (2d Cir. 2008) (upholding an adverse credibility finding because even though all the inconsistencies and omissions were not material to the applicant's claim, their cumulative effect "reasonably could have affected the IJ's evaluation of Lin's credibility").
- Xiu Xia Lin v. Mukasey, 534 F.3d 162, 166 n.3 (2d Cir. 2008) (stating that for the purposes of a credibility determination, an inconsistency and an omission are "functionally equivalent").
- Shu Wen Sun v. BIA, 510 F.3d 377, 381 (2d Cir. 2007) (noting that an applicant's response "was evasive and non-responsive in a manner that suggested untruthfulness, rather than nervousness or difficulty comprehending the proceedings").
- Belortaja v. Gonzales, 484 F.3d 619, 626 (2d Cir. 2007) (finding an adverse credibility determination proper where significant events central to the respondent's claim were omitted from his asylum application).
- Zhong v. U.S. Dep't of Justice, 480 F.3d 104, 127 (2d Cir. 2007) (An applicant's testimonial discrepancies must be weighed in light of their significance to the total context of the respondent's claim, particularly when a respondent's testimony is generally consistent, rational, and believable).
- See Pavlova v. INS, 441 F.3d 82, 90 (2d Cir. 2006) ("[A]n omission of persecutory incidents from [an applicant's] application are not necessarily fatal to his or her claim.").
- See Chen v. Gonzales, 162 F. App'x 98, 99 (2d Cir. 2006) (finding that an IJ cannot conclude that solicited testimony is inconsistent simply because it is more detailed than the written asylum application).

- See Latifi v. Gonzales, 430 F.3d 103, 105 (2d Cir. 2005) (per curiam) (distinguishing between discrepancies that are "significant and numerous," rather than "insignificant and trivial")
- Xu Duan Dong v. Ashcroft, 406 F.3d 110, 111-12 (2d Cir. 2005) (finding that an omission which is not "incidental or ancillary" but which concerns an "essential factual allegation" of the alien's asylum claim is sufficient to support an adverse credibility finding).
- Majidi v. Gonzales, 430 F.3d 77, 80-81 (2d Cir. 2005) (noting that an IJ is not required to accept a witness's explanation for an inconsistency unless the witness demonstrates that a reasonable fact-finder would be compelled to credit his testimony).
- See Secaida-Rosales v. INS, 331 F.3d 297, 308 (2d Cir. 2003) (noting that an applicant's "failure to list in his or her initial application facts that emerge later in testimony will not automatically provide a sufficient basis for an adverse credibility finding"), superseded by statute on other grounds as recognized in Xiu Xia Lin, 534 F.3d at 167.

CORROBORATION

- See generally 8 C.F.R. § 1287.6 (an official document, such as a driver's license, merits diminished weight in the absence of authentication).
- Yan Juan Chen v. Holder, 658 F.3d 246, 251 (2d Cir. 2011) ("In light of [the IJ's] finding that [a respondent's] testimony was unpersuasive and lacking in detail, the IJ properly concluded that [the respondent] was required to present reasonably available corroborating evidence to support her application.").
- Matter of H-L-H- & Z-Y-Z-, 25 I&N Dec. 209, 215 (BIA 2010), remanded on other grounds by Huang, 677 F.3d 130 (documents are only entitled to minimal weight because they were written by interested family members and the authors are unavailable for cross examination).
    - ("State Department reports on country conditions are highly probative evidence and are usually the best source of information on conditions in foreign nations").
    - The Court finds that the State Department reports, which make no reference to a material increase in persecution of Christians in China, are more reliable and impartial sources and therefore merit greater deference. See H-L-H- & Z-Y-Z-, 25 I&N Dec. at 213 (noting that State Department reports are entitled to "special weight" due the "collective expertise and experience" of Department employees) (quoting Aguilar–Ramos v. Holder, 594 F.3d 701, 705 n. 6 (9th Cir. 2010)).
- See Biao Yang v. Gonzales, 496 F.3d 268, 273 (2d Cir. 2007) ("An applicant's failure to corroborate his or her testimony may bear on credibility, because the absence of corroboration in general makes an applicant unable to rehabilitate testimony that has already been called into question").

- Abankwah v. INS, 185 F.3d 18, 26 (2d Cir.1999) ("[I]t must be acknowledged that a genuine refugee does not flee her native country armed with affidavits, expert witnesses, and extensive documentation").
- *According to DOJ policy, Wikileaks disclosures improperly breach security classifications and are usually withdrawn in line with this policy from case records

IMPLAUSIBILITY

- Yan v. Mukasey, 509 F.3d 63, 67 (2d Cir. 2007) (stating it "is well settled that, in assessing the credibility of an asylum applicant's testimony, an [Immigration Judge] is entitled to consider whether the applicant's story is inherently implausible");
- Ming Xia Chen v. BIA, 435 F.3d 141, 145 (2d Cir. 2006) (holding a Court *may* find a respondent's testimony incredible on the basis of implausibility).

ADMISSIBILITY

- Felzcerek v. INS, 75 F.3d 112, 116 (2d Cir. 1996) (While the strict rules of evidence do not apply in removal proceedings, admissibility pursuant to the Federal Rules of Evidence is persuasive in determining the reliability and trustworthiness of evidence in the context of Immigration Court).
- Yang v. McElroy, 277 F.3d 158, 163 (2d Cir. 2002) (The Court may take administrative notice of [the most recent State Department reports]).
- **Untimely Submissions in General**
    - For individual calendar hearings involving non-detained aliens, filings must be submitted at least fifteen days in advance of the hearing. Immigration Court Practice Manual, Chapter 3.1(b)(ii) (November 2, 2017).
- **Submissions After a Deadline Set by the IJ**
    - The Court notes that these submissions were untimely, as the IJ set a filing deadline of _____. See Immigration Court Practice Manual, Chapter 3.1(b) (November 2, 2017). Nevertheless, the Court admits them in its discretion. Practice Manual, Chap. 3.1(d)(ii)
- **Foreign Language Documents Translation Issues**
    - Foreign language documents with incomplete translations, no translation, or no certification from the translator
    - The documents were not submitted in accordance with the regulatory requirements: Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation and a certification signed by the translator that must be printed legibly or typed. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities. 8 C.F.R. §

1003.33; see also Immigration Court Practice Manual, Chapter 3.3(a) (November 2, 2017).

- **Background Info Not Highlighted (When the IJ wants to point this out)**
    - The respondent's submission of background information was not in compliance with the Immigration Court Practice Manual, as he failed to highlight relevant portions of the secondary sources. Immigration Court Practice Manual, Chapter 3.3(e)(iv) (November 2, 2017). The Court notes that reviewing the exhibits without such material highlighted is a significant drain on judicial resources.

PREVIOUS INTERVIEWS

- Zhang v. Holder, 585 F.3d 715, 723-25 (2d Cir. 2009) (noting that a credible fear interview bears sufficient indicia of reliability where the interview was memorialized in a typewritten document setting forth the questions and answers, the applicant was advised of the importance of telling the truth, and the interview was conducted with the aid of an interpreter and the applicant's answers did not suggest that he did not understand the interpreter).
- Matter of S-S-, 21 I&N Dec. 121, 124 (BIA 1995) (holding that "when the credibility of an applicant for asylum and withholding of deportation is placed in issue because of alleged statements made at the asylum interview, at a minimum, the record of the interview must contain a meaningful, clear, and reliable summary of the statements made by the applicant").
- Diallo v. Gonzales, 445 F.3d 624 (2d Cir. 2006) ("the reliability of asylum interviews is not as pressing as it is in the airport interview context")
- **Former IJ:** The Respondent appeared before former Immigration Judge [NAME], who has since retired. Pursuant to 8 C.F.R. § 1240.1(b), the Court notes that it has conducted a thorough and comprehensive review of the record and is familiar with all of the evidence contained therein.

PROCEDURAL HISTORY

- **Legacy INS**
    - As of March 1, 2003, the functions of INS were transferred to the Department of Homeland Security ("the Department"). See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002).
- **Former INA § 241**
    - Former INA § 241 was redesignated as INA § 237 by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRAIRA"), Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996).