

**ASYLUM CREDIBILITY AND
CORROBORATING EVIDENCE
IN THE FEDERAL COURTS OF APPEALS
AND IN THE BOARD OF IMMIGRATION APPEALS
OUTLINE**

BY

S. KATHLEEN PEPPER

AND

FATIMAH A. MATEEN

OCTOBER 18, 2006

Updated by Dee Brooks August 2007

Updated by Jeffrey Chase July 2008, March 2010 and March 2011

Updated by Andrea J. Cali, Christopher J. Gearin,
and Heidi K. Hansen February 2009*

* Cases cited in outline are current and have been cite checked through March 22, 2011. Cases may have been abrogated or overruled by precedent decisions issued after this date.

TABLE OF CONTENTS

INTRODUCTION	11
FIRST CIRCUIT	12
I. <u>CREDIBILITY</u>	12
A. <u>Basic Credibility Standards</u>	12
B. <u>Asylum Application</u>	13
C. <u>Asylum Officer Interview</u>	13
D. <u>Conjecture and Speculation</u>	14
E. <u>Credibility v. Plausibility</u>	14
F. <u>Demeanor</u>	14
G. <u>Embellishment</u>	15
H. <u>Inconsistent Statements</u>	15
1. <u>Substantial Inconsistencies</u>	16
2. <u>Minor Inconsistencies</u>	16
I. <u>Lack of Specific and Detailed Testimony</u>	17
J. <u>Omissions of Information from Asylum Application</u>	17
K. <u>Opportunity to Explain</u>	18
1. <u>Explanation Required</u>	18
2. <u>Explanation not Required</u>	19
L. <u>REAL ID Act</u>	19
M. <u>Responsiveness to Questions</u>	20
II. <u>CORROBORATING EVIDENCE</u>	21
A. <u>Basic Corroborating Evidence Standards</u>	21
1. <u>If Testimony is Credible</u>	21
2. <u>If Testimony is not Credible</u>	22
B. <u>Airport Statements</u>	23
C. <u>Authentication of Documents</u>	23
D. <u>Department of State Country Reports</u>	23
E. <u>False Documents, including False Statements</u>	26
F. <u>New Evidence on Appeal</u>	26
SECOND CIRCUIT	27
I. <u>CREDIBILITY</u>	27
A. <u>Basic Credibility Standards</u>	27
1. <u>Religious Persecution</u>	29

B. <u>Asylum Application</u>	30
C. <u>Asylum Officer Interview</u>	31
D. <u>Conjecture and Speculation</u>	31
E. <u>Credibility v. Plausibility</u>	33
F. <u>Demeanor</u>	34
G. <u>Embellishment</u>	35
H. <u>Inconsistent Statements</u>	35
1. <u>Substantial Inconsistencies</u>	36
2. <u>Minor Inconsistencies</u>	36
I. <u>Lack of Specific and Detailed Testimony</u>	37
J. <u>Omissions</u>	38
K. <u>Opportunity to Explain</u>	39
1. <u>Explanation Required</u>	39
2. <u>Explanation not Required</u>	40
L. <u>REAL ID Act</u>	40
M. <u>Responsiveness to Questions</u>	41
N. <u>Cases Where the Board Rejects the IJ’s Finding</u>	42
O. <u>Post <i>Shao</i>-CPC Cases</u>	42
II. <u>CORROBORATING EVIDENCE</u>	43
A. <u>Basic Corroborating Evidence Standards</u>	43
1. <u>If Testimony is Credible</u>	44
2. <u>If Testimony is not Credible</u>	45
B. <u>Airport Statements</u>	45
C. <u>Authentication of Documents</u>	46
D. <u>Department of State Country Reports</u>	47
E. <u>False Documents, including False Statements</u>	49
F. <u>New Evidence on Appeal</u>	51
THIRD CIRCUIT	52
I. <u>CREDIBILITY</u>	52
A. <u>Basic Credibility Standards</u>	52
B. <u>Asylum Application</u>	53
C. <u>Asylum Officer Interview</u>	53
D. <u>Conjecture and Speculation</u>	53
E. <u>Credibility v. Plausibility</u>	54
F. <u>Demeanor</u>	54
G. <u>Embellishment</u>	54
H. <u>Inconsistent Statements</u>	54
1. <u>Substantial Inconsistencies</u>	55

2. <u>Minor Inconsistencies</u>	55
I. <u>Lack of Specific and Detailed Testimony</u>	56
J. <u>Omissions</u>	56
K. <u>Opportunity to Explain</u>	56
1. <u>Explanation Required</u>	56
2. <u>Explanation not Required</u>	57
L. <u>REAL ID Act</u>	57
M. <u>Responsiveness to Questions</u>	57
II. <u>CORROBORATING EVIDENCE</u>	57
A. <u>Basic Corroborating Evidence Standards</u>	58
1. <u>If Testimony is Credible</u>	58
2. <u>If Testimony is not Credible</u>	59
B. <u>Airport Statements</u>	59
C. <u>Authentication of Documents</u>	60
D. <u>Department of State Country Reports</u>	61
E. <u>False Documents, including False Statements</u>	62
F. <u>New Evidence on Appeal</u>	62
FOURTH CIRCUIT	64
I. <u>CREDIBILITY</u>	64
A. <u>Basic Credibility Standards</u>	64
B. <u>Asylum Application</u>	65
C. <u>Asylum Officer Interview</u>	65
D. <u>Conjecture and Speculation</u>	65
E. <u>Credibility v. Plausibility</u>	66
F. <u>Demeanor</u>	66
G. <u>Embellishment</u>	66
H. <u>Inconsistent Statements</u>	66
1. <u>Substantial Inconsistencies</u>	66
2. <u>Minor Inconsistencies</u>	67
I. <u>Lack of Specific and Detailed Testimony</u>	67
J. <u>Omissions</u>	67
K. <u>Opportunity to Explain</u>	67
1. <u>Explanation Required</u>	67
2. <u>Explanation not Required</u>	67
L. <u>REAL ID Act</u>	67
M. <u>Responsiveness to Questions</u>	67
II. <u>CORROBORATING EVIDENCE</u>	68

A. <u>Basic Corroborating Evidence Standards</u>	68
1. <u>If Testimony is Credible</u>	69
2. <u>If Testimony is not Credible</u>	69
B. <u>Airport Statements</u>	69
C. <u>Authentication of Documents</u>	69
D. <u>Department of State Country Reports</u>	70
E. <u>False Documents, including False Statements</u>	70
F. <u>New Evidence on Appeal</u>	70
FIFTH CIRCUIT	71
I. <u>CREDIBILITY</u>	71
A. <u>Basic Credibility Standards</u>	71
B. <u>Asylum Application</u>	71
C. <u>Asylum Officer Interview</u>	71
D. <u>Conjecture and Speculation</u>	71
E. <u>Credibility v. Plausibility</u>	71
F. <u>Demeanor</u>	71
G. <u>Embellishment</u>	72
H. <u>Inconsistent Statements</u>	72
1. <u>Substantial Inconsistencies</u>	72
2. <u>Minor Inconsistencies</u>	72
I. <u>Lack of Specific and Detailed Testimony</u>	72
J. <u>Omissions</u>	72
K. <u>Opportunity to Explain</u>	72
1. <u>Explanation Required</u>	73
2. <u>Explanation not Required</u>	73
L. <u>REAL ID Act</u>	73
M. <u>Responsiveness to Questions</u>	73
II. <u>CORROBORATING EVIDENCE</u>	73
A. <u>Basic Corroborating Evidence Standards</u>	73
1. <u>If Testimony is Credible</u>	73
2. <u>If Testimony is not Credible</u>	74
B. <u>Airport Statements</u>	74
C. <u>Authentication of Documents</u>	74
D. <u>Department of State Country Reports</u>	74
E. <u>False Documents, including False Statements</u>	74
F. <u>New Evidence on Appeal</u>	75

SIXTH CIRCUIT	76
I. <u>CREDIBILITY</u>	76
A. <u>Basic Credibility Standards</u>	76
B. <u>Asylum Application</u>	76
C. <u>Asylum Officer Interview</u>	77
D. <u>Conjecture and Speculation</u>	77
E. <u>Credibility v. Plausibility</u>	78
F. <u>Demeanor</u>	78
G. <u>Embellishment</u>	78
H. <u>Inconsistent Statements</u>	78
1. <u>Substantial Inconsistencies</u>	78
2. <u>Minor Inconsistencies</u>	79
I. <u>Lack of Specific and Detailed Testimony</u>	80
J. <u>Omissions</u>	80
K. <u>Opportunity to Explain</u>	81
1. <u>Explanation Required</u>	81
2. <u>Explanation not Required</u>	81
L. <u>REAL ID Act</u>	81
M. <u>Responsiveness to Questions</u>	81
II. <u>CORROBORATING EVIDENCE</u>	82
A. <u>Basic Corroborating Evidence Standards</u>	82
1. <u>If Testimony is Credible</u>	82
2. <u>If Testimony is not Credible</u>	83
B. <u>Airport Statements</u>	83
C. <u>Authentication of Documents</u>	83
D. <u>Department of State Country Reports</u>	84
E. <u>False Documents, including False Statements</u>	85
F. <u>New Evidence on Appeal</u>	86
SEVENTH CIRCUIT	87
I. <u>CREDIBILITY</u>	87
A. <u>Basic Credibility Standards</u>	87
B. <u>Asylum Application</u>	89
C. <u>Asylum Officer Interview</u>	89
D. <u>Conjecture and Speculation</u>	89
E. <u>Credibility v. Plausibility</u>	89
F. <u>Demeanor</u>	90

G. <u>Embellishment</u>	90
H. <u>Inconsistent Statements</u>	90
1. <u>Substantial Inconsistencies</u>	91
2. <u>Minor Inconsistencies</u>	91
I. <u>Lack of Specific and Detailed Testimony</u>	92
J. <u>Omissions</u>	93
K. <u>Opportunity to Explain</u>	93
1. <u>Explanation Required</u>	93
2. <u>Explanation not Required</u>	94
L. <u>REAL ID Act</u>	94
M. <u>Responsiveness to Questions</u>	95
II. <u>CORROBORATING EVIDENCE</u>	95
A. <u>Basic Corroborating Evidence Standards</u>	95
1. <u>If Testimony is Credible</u>	97
2. <u>If Testimony is not Credible</u>	98
B. <u>Airport Statements</u>	98
C. <u>Authentication of Documents</u>	100
D. <u>Department of State Country Reports</u>	100
E. <u>False Documents, including False Statements</u>	101
F. <u>New Evidence on Appeal</u>	103
EIGHTH CIRCUIT	104
I. <u>CREDIBILITY</u>	104
A. <u>Basic Credibility Standards</u>	104
B. <u>Asylum Application</u>	105
C. <u>Asylum Officer Interview</u>	106
D. <u>Conjecture and Speculation</u>	106
E. <u>Credibility v. Plausibility</u>	107
F. <u>Demeanor</u>	108
G. <u>Embellishment</u>	108
H. <u>Inconsistent Statements</u>	108
1. <u>Substantial Inconsistencies</u>	109
2. <u>Minor Inconsistencies</u>	109
I. <u>Lack of Specific and Detailed Testimony</u>	109
J. <u>Omissions</u>	110
K. <u>Opportunity to Explain</u>	110
1. <u>Explanation Required</u>	111
2. <u>Explanation not Required</u>	111
L. <u>REAL ID Act</u>	111

M. <u>Responsiveness to Questions</u>	111
II. <u>CORROBORATING EVIDENCE</u>	112
A. <u>Basic Corroborating Evidence Standards</u>	112
1. <u>If Testimony is Credible</u>	114
2. <u>If Testimony is not Credible</u>	114
B. <u>Airport Statements</u>	115
C. <u>Authentication of Documents</u>	115
D. <u>Department of State Country Reports</u>	115
E. <u>False Documents, including False Statements</u>	116
F. <u>New Evidence on Appeal</u>	117
NINTH CIRCUIT	118
I. <u>CREDIBILITY</u>	118
A. <u>Basic Credibility Standards</u>	118
B. <u>Asylum Application</u>	121
C. <u>Asylum Officer Interview</u>	123
D. <u>Conjecture and Speculation</u>	123
E. <u>Credibility vs. Plausibility</u>	126
F. <u>Demeanor</u>	127
G. <u>Embellishment</u>	127
H. <u>Inconsistent Statements</u>	128
1. <u>Substantial Inconsistencies</u>	129
2. <u>Minor Inconsistencies</u>	130
I. <u>Lack of Specific and Detailed Testimony</u>	132
J. <u>Omissions</u>	133
K. <u>Opportunity to Explain</u>	133
1. <u>Explanation Required</u>	134
2. <u>Explanation not Required</u>	134
L. <u>REAL ID Act</u>	134
M. <u>Responsiveness to Questions</u>	136
II. <u>CORROBORATING EVIDENCE</u>	136
A. <u>Basic Corroborating Evidence Standards</u>	136
1. <u>If Testimony is Credible</u>	138
2. <u>If Testimony is not Credible</u>	139
B. <u>Airport Statements</u>	139
C. <u>Authentication of Documents</u>	140
D. <u>Department of State Country Reports</u>	140

E. <u>False Documents, including False Statements</u>	141
F. <u>New Evidence on Appeal</u>	142
TENTH CIRCUIT	144
I. <u>CREDIBILITY</u>	144
A. <u>Basic Credibility Standards</u>	144
B. <u>Asylum Application</u>	145
C. <u>Asylum Officer Interview</u>	146
D. <u>Conjecture and Speculation</u>	146
E. <u>Credibility vs. Plausibility</u>	146
F. <u>Demeanor</u>	147
G. <u>Embellishment</u>	147
H. <u>Inconsistent Statements</u>	147
1. <u>Substantial Inconsistencies</u>	147
2. <u>Minor Inconsistencies</u>	148
I. <u>Lack of Specific and Detailed Testimony</u>	148
J. <u>Omissions</u>	148
K. <u>Opportunity to Explain</u>	148
1. <u>Explanation Required</u>	149
2. <u>Explanation not Required</u>	149
L. <u>REAL ID Act</u>	149
M. <u>Responsiveness to Questions</u>	149
II. <u>CORROBORATING EVIDENCE</u>	150
A. <u>Basic Corroborating Evidence Standards</u>	150
1. <u>If Testimony is Credible</u>	150
2. <u>If Testimony is not Credible</u>	150
B. <u>Airport Statements</u>	150
C. <u>Authentication of Documents</u>	150
D. <u>Department of State Country Reports</u>	151
E. <u>False Documents, including False Statements</u>	151
F. <u>New Evidence on Appeal</u>	151
ELEVENTH CIRCUIT	152
I. <u>CREDIBILITY</u>	152
A. <u>Basic Credibility Standards</u>	152
B. <u>Asylum Application</u>	153
C. <u>Asylum Officer Interview</u>	153

D. <u>Conjecture and Speculation</u>	154
E. <u>Credibility vs. Plausibility</u>	154
F. <u>Demeanor</u>	154
G. <u>Embellishment</u>	155
H. <u>Inconsistent Statements</u>	155
1. <u>Substantial Inconsistencies</u>	155
2. <u>Minor Inconsistencies</u>	155
I. <u>Lack of Specific and Detailed Testimony</u>	156
J. <u>Omissions</u>	156
K. <u>Opportunity to Explain</u>	156
1. <u>Explanation Required</u>	157
2. <u>Explanation not Required</u>	157
L. <u>REAL ID Act</u>	157
M. <u>Responsiveness to Questions</u>	158
II. <u>CORROBORATING EVIDENCE</u>	158
A. <u>Basic Corroborating Evidence Standards</u>	158
1. <u>If Testimony is Credible</u>	158
2. <u>If Testimony is not Credible</u>	158
B. <u>Airport Statements</u>	158
C. <u>Authentication of Documents</u>	159
D. <u>Department of State Country Reports</u>	159
E. <u>False Documents, including False Statements</u>	160
F. <u>New Evidence on Appeal</u>	160
 BOARD OF IMMIGRATION APPEALS**	 161

**Selected cases are listed with a short summary.

INTRODUCTION

The following outline addresses the standards of the federal circuit courts of appeal regarding adverse credibility findings and corroborating evidence requirements. The outline is organized by federal circuit court and within each court heading by various sub-headings to help locate relevant information. Published cases from January 1, 2000, through July 28, 2006, were examined and those which were deemed the most useful or helpful were included.*** For those few circuit courts who publish infrequently, citations to unpublished cases were included in order to provide examples of how the court reviews asylum cases involving adverse credibility findings and corroborative evidence requirements. Each circuit court section includes the same sub-sections. A “no cases listed” for a sub-section means only that no cases were found, within the above parameters, which squarely fell within that sub-section.

*** The outline has since been updated on several occasions, and currently also includes relevant cases issued between July 29, 2006, and March 8, 2010.

FIRST CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

Although an IJ may not simply ignore substantial testimonial and documentary proof, she need not discuss ad nauseum every piece of evidence. An alien's credibility, standing alone, may sustain his burden of proving eligibility for withholding of removal. *See Pan v. Gonzales*, 489 F.3d 80 (1st Cir. 2007).

An Immigration Judge's adverse credibility finding will be given deference where such finding is supported by specific reasons based upon the evidence of record. *See Mam v. Holder*, 566 F.3d 280, 283 (1st Cir. 2009); *Cuko v. Mukasey*, 522 F.3d 32, 37 (1st Cir. 2008); *Keang Hong Long v. Gonzales*, 422 F.3d 37, 40 (1st Cir. 2005); *Akinwande v. Ashcroft*, 380 F.3d 517, 522 (1st Cir. 2004).

A credibility finding will be upheld if "the IJ has given reasoned consideration to the evidence and has provided a cogent explanation for his finding." *Huang v. Holder*, 620 F.3d 33, 37 (1st Cir. 2010), *citing Munoz-Monsalve v. Mukasey*, 551 F.3d 1, 5 (1st Cir. 2008). Similarly, an adverse credibility finding must be supported by specific, cogent, and supportable explanations of the reasons for concluding that an alien is not credible. *See Simo v. Gonzales*, 445 F.3d 7, 11 (1st Cir. 2006). *See also El Moraghy v. Ashcroft*, 331 F.3d 195, 205 (1st Cir. 2003). An adverse credibility finding "lacking an itemization of the substantial evidence" necessary to support such finding "cannot be allowed to stand." *Kartasheva v. Holder*, 582 F.3d 96, 108 (1st Cir. 2009).

An Immigration Judge is not required to resolve all inconsistencies and discrepancies in favor of the alien. *See Dhima v. Gonzales*, 416 F.3d 92, 96 (1st Cir. 2005) (finding Immigration Judge's adverse credibility finding, based on inconsistencies and omissions, to be "unassailable").

An alien's testimony, if found to be not credible, "may be either disregarded or sharply discounted, depending on the circumstances." *See Stroni v. Gonzales*, 454 F.3d 82, 88 (1st Cir. 2006), *citing Nikijuluw v. Gonzales*, 427 F.3d 115, 121 (1st Cir. 2005).

An alien's use of false documents, if not "satisfactorily explained, may reflect directly and adversely on [an alien's] overall credibility." *See Olujoke v. Gonzales*, 411 F.3d 16, 22 (1st Cir. 2005) (finding alien's use of false documents to enter the United States and presentation of fraudulent birth certificate to Immigration Judge to support Immigration Judge's adverse credibility finding where Immigration Judge noted that there could be a good reason for the creation and use of false documents to flee persecution but such reason was not presented in this case).

“[W]itness demeanor and conflicting testimony are crucial factors in assessing credibility.” *See Afful v. Ashcroft*, 380 F.3d 1, 5 (1st Cir. 2004).

An Immigration Judge’s adverse credibility finding may still be supported by the record, if some part of such finding is incorrect, where there is “no realistic possibility” that the Immigration Judge would have reached a different outcome. *See Zheng v. Gonzales*, 464 F.3d 60, 64 (1st Cir. 2006).

An adverse credibility finding “disposes of [an alien’s] claim of past persecution.” *See Toloza-Jimenez v. Gonzales*, 457 F.3d 155, 160 (1st Cir. 2006).

B. Asylum Application

An Immigration Judge’s adverse credibility finding, based upon omissions of key events from the alien’s asylum application and interview with an asylum officer, was supported by the record. *See Sharari v. Gonzales*, 407 F.3d 467, 474-75 (1st Cir. 2005).

An alien’s fraudulent asylum application, coupled with false testimony under oath before an asylum officer, support a finding that the alien had a “propensity to dissemble under oath.” *See Laurent v. Ashcroft*, 359 F.3d 59, 64 (1st Cir. 2004).

C. Asylum Officer Interview

A report from an asylum interview enjoyed a “presumption of regularity” and the alien was unable to offer a persuasive explanation for the discrepancies between testimony and the asylum officer’s report by relying on printing error. *Lutaaya v. Mukasey*, 535 F.3d 63, 71 (1st Cir. 2008), *citing Pan v. Gonzales*, 489 F.3d 80 (1st Cir. 2007).

The report of the asylum interview enjoys a presumption of regularity, and the IJ was entitled to treat that report as accurate. *See Pan v. Gonzales*, 489 F.3d 80 (1st Cir. 2007).

Where an Immigration Judge’s adverse credibility finding independently discusses the specific reasons for finding the alien not credible, and includes as part of that finding, an asylum officer’s assessment from the alien’s affirmative asylum interview, that adverse credibility finding will be upheld. *See Ishak v. Gonzales*, 422 F.3d 22, 32-33 (1st Cir. 2005); *Kheang Hong Long v. Gonzales*, 422 F.3d 37, 40-41 (1st Cir. 2005).

An Immigration Judge’s adverse credibility finding, based upon omissions of key events from the alien’s asylum application and interview with an asylum officer, was supported by the record. *See Sharari v. Gonzales*, 407 F.3d 467, 474-75 (1st Cir. 2005).

Alien’s failure to mention key event underpinning her asylum claim (rape by government

official) to asylum officer, who was female, supported adverse credibility finding regarding alien's claim of past persecution. *See Ali v. Gonzales*, 401 F.3d 11, 15-16 (1st Cir. 2005). *See also Segran v. Mukasey*, 511 F. 3d 1 (1st Cir. 2007) (failure to mention brother's murder).

D. Conjecture and Speculation

The IJ and BIA may reject an asylum applicant's speculation as to the motive of his alleged persecutors despite finding him/her credible as to historical facts. *Ly v. Holder*, 614 F.3d 20, 24-25 (1st Cir. 2010) (*citing Ziu v. Gonzales*, 412 F.3d 202, 204 (1st Cir. 2005)).

The Board may not draw inferences that appear wholly speculative and without record support. *See Castenada-Castillo v. Gonzales*, 488 F.3d 17 (1st Cir. 2007) (en banc).

E. Credibility v. Plausibility

An Immigration Judge's adverse credibility finding can be supported where an alien's claim is implausible on a point central to his or her asylum claim, and is not reasonably explained. *See Zheng v. Gonzales*, 464 F.3d 60 (1st Cir. 2006) (finding that alien's explanation for an implausible part of his claim to be "farfetched"). *See also Chanthou Hem v. Mukasey*, 514 F.3d 67, 73 (1st Cir. 2008).

Substantial evidence supported an IJ's determination that it was implausible that family planning officials would hide at a hospital to catch the respondent, but then fail to take the further step of seeking him at the nearby hotel where he was staying under his own name; the Court further found it "suspicious" that the respondent would wait 2 years to disclose her forced abortion to her doctor in the U.S.. *Chen v. Holder*, 579 F.3d 73, 79 (1st Cir. 2009).

F. Demeanor

When an adverse credibility finding is based on discrepancies in testimony, rather than on demeanor, the Immigration Judge's conclusion is entitled to less deference. *See Ly v. Mukasey*, 524 F.3d 126, 131 (1st Cir. 2008).

"[T]he IJ's findings as to demeanor are subject to great weight. *See, e.g. Rodriguez Del Carmen v. Gonzales*, 441 F.3d 41, 43 (1st Cir. 2006) ('Matters of witness credibility and demeanor are peculiarly for the factfinder')." *Cuko v. Mukasey*, 522 F.3d 32, 38 (1st Cir. 2008). *See also Chen v. Holder*, 579 F.3d 73, 79 (1st Cir. 2009); *Mam v. Holder*, 566 F.3d 280, 283 (1st Cir. 2009).

"[W]itness demeanor and conflicting testimony are crucial factors in assessing credibility." *See Afful v. Ashcroft*, 380 F.3d 1, 5 (1st Cir. 2004).

“[A] witness’s demeanor is often a critical factor in determining his veracity.” *See Aguilar-Solis v. INS*, 168 F.3d 565, 570-71 (1st Cir. 1999) (also recognizing that while testimony alone may meet an alien’s burden of proof, a reviewing court need not “take every applicant’s uncontradicted testimony at face value, for testimony sometimes is internally inconsistent or belied by the prevailing circumstances.”). *See also Falae v. Gonzales*, 411 F.3d 11, 15 (1st Cir. 2005) (adverse credibility finding based, in part, on alien’s demeanor).

A court should give an Immigration Judge’s adverse credibility finding “significant respect,” where such a determination is supported by specific findings because he or she is the person who heard and saw the alien or witness testify. *See Aguilar-Solis v. INS*, 168 F.3d 565, 570-71 (1st Cir. 1999).

G. Embellishment

A pattern of embellishment can undermine an alien’s credibility. *See Albathani v. INS*, 318 F.3d 365, 374 (1st Cir. 2003). *See also Jean v. Gonzales*, 461 F.3d 87, 91 (1st Cir. 2006) (finding alien’s embellished and at times “completely contradictory” testimony supported the Immigration Judge’s adverse credibility finding).

H. Inconsistent Statements

Several discrepancies, including one as to whether the alien reported purported harassment to the police, along with a failure to offer any documents to corroborate vague testimony, did not compel a favorable credibility determination. *See Abdelmalek v. Mukasey*, 540 F.3d 19, 23 (1st Cir. 2008).

“We have specifically noted that inconsistencies between statements in an asylum application and testimony during the asylum proceedings provide substantial evidence to support an adverse credibility determination.” *Phal v. Mukasey*, 524 F.3d 85, 89 (1st Cir. 2008), *citing Melhem v. Gonzales*, 500 F.3d 78, 81 (1st Cir. 2007).

An adverse credibility determination does not require the respondent to have been intentionally deceitful: “A statement may be untrue (and thus, not credible) because of lack of knowledge, faulty memory, garbled expression, or other reasons, notwithstanding the declarant’s intent to speak the truth.” *Seng v. Holder*, 584 F.3d 13, 19 (1st Cir. 2009) (Pre-REAL ID Act standard).

Inconsistencies between an alien’s testimony before an Immigration Judge and the alien’s prior statements (in this case during an airport interview) are not necessarily sufficient to support an adverse credibility finding without consideration of the other evidence of record and the alien’s explanations for the inconsistencies. *See Simo v. Gonzales*, 445 F.3d 7, 12 (1st Cir. 2006).

Neither an Immigration Judge nor the Board is required to accept an alien's explanations for any inconsistencies although such explanation must be considered. *See Weng v. Holder*, 593 F.3d 66, 72 (1st Cir. 2009); *Simo v. Gonzales*, 445 F.3d 7, 12 (1st Cir. 2006) (finding that alien's explanations were inconsistent and the Board properly discredited them).

1. Substantial Inconsistencies

Details concerning an alleged beating, when “[v]iewed collectively and in context” will support an adverse credibility finding. *Bebri v. Mukasey*, 545 F.3d 47, 51 (1st Cir. 2008).

While some inconsistencies, in isolation, may seem like “small potatoes,” what counts is that their cumulative effect is great. Inconsistencies that involved matters important to the alien's claims for relief, such as the circumstances of his alleged detention, when he was last in China, and the date and manner of his arrival in the United States, were found to be substantial. *Pan v. Gonzales*, 489 F.3d 80 (1st Cir. 2007).

Inconsistent statements which go to the heart of an alien's claim or concern the central facts of a key event (such as discrepancies concerning membership in a political party, and a purported attack and rape) will support an adverse credibility finding. *See Lutaaya v. Mukasey*, 535 F.3d 63, 70 (1st Cir. 2008); *Toure v. Ashcroft*, 400 F.3d 44, 47-48 (1st Cir. 2005), citing *Bojorques-Villanueva v. INS*, 194 F.3d 14, 17 (1st Cir. 1999).

The Immigration Judge's specific and cogent reasons for finding the alien not credible were supported by the record where the adverse credibility finding was based upon the fact that the alien kept returning to a recitation of the events as set forth in his asylum application, had trouble answering questions about his claim which did not stem from the facts in his asylum application, was forced to correct his testimony several times, and had internally inconsistent and implausible testimony. *See Singh v. Gonzales*, 413 F.3d 156, 159-60 (1st Cir. 2005) (finding that the corroborating evidence undermined the alien's claim and stating that “the record virtually compels the conclusion that what Singh presented was far from the truth and the untruths were deliberate.”). *See also Segran v. Mukasey*, 511 F. 3d 1 (1st Cir. 2007); *Melhem v. Gonzales*, 500 F. 3d 78 (1st Cir. 2007); *Kheang Hong Long v. Gonzales*, 422 F.3d 37, 39-41 (1st Cir. 2005) (adverse credibility findings based upon inconsistencies).

The Court upheld an adverse credibility finding based upon alien's inconsistencies, lack of detail regarding a key event, corroborating affidavits that were unsigned, and contradictory information in the Department of State Country Report. *See Njenga v. Ashcroft*, 386 F.3d 335, 339-40 (1st Cir. 2004).

2. Minor Inconsistencies

In a pre-REAL ID Act case, the court noted that for REAL ID Act cases, minor discrepancies may be considered in determining credibility. *See Lutaaya v. Mukasey*, 535 F.3d 63, 70 n.8 (1st Cir. 2008).

Minor or trivial inconsistencies cannot support an adverse credibility finding. *See Stroni v. Gonzales*, 454 F.3d 82, 88 (1st Cir. 2006), *citing Secaida-Rosales v. INS*, 331 F.3d 297, 308 (2d Cir. 2003). *See also Castenada-Castillo v. Gonzales*, 488 F.3d 17, 22 (1st Cir. 2007) (en banc) (finding, in a detailed discussion, that inconsistencies relied upon by the Board were not supported by the record and that the Board mischaracterized the alien's testimony when finding the alien not credible).

An adverse credibility finding based upon trivial, minor, collateral, or ancillary discrepancies cannot be supported, but will be upheld if based upon inconsistencies which go to the heart of an alien's claim. *See Zheng v. Gonzales*, 464 F.3d 60, 63-64 (1st Cir. 2006); *Hoxha v. Gonzales*, 446 F.3d 210, 214 (1st Cir. 2006); *Bojorques-Villanueva v. INS*, 194 F.3d 14, 16 (1st Cir. 1999). Discrepancies which do not go to the heart of the claim and thus would not alone support an adverse credibility finding may provide further support for an adverse credibility finding when taken together with other more substantial concerns. *Phal v. Mukasey*, 524 F.3d 85, 88-89 (1st Cir. 2008); *Teng v. Mukasey*, 516 F.3d 12, 16-17 (1st Cir. 2008); *Lin v. Gonzales*, 503 F.3d 4, 8 (1st Cir. 2007).

I. Lack of Specific and Detailed Testimony

An alien's vagueness and contradictions of material aspects of his or her claim will support an adverse credibility finding. *See Diaz-Garcia v. Holder*, 609 F.3d 21 (1st Cir. 2010); *Rodriguez Del Carmen v. Gonzales*, 441 F.3d 41, 44 (1st Cir. 2006).

The Court upheld an adverse credibility finding based upon alien's inconsistencies, lack of detail regarding a key event, corroborating affidavits that were unsigned, and contradictory information in the Department of State Country Report. *See Njenga v. Ashcroft*, 386 F.3d 335, 339-40 (1st Cir. 2004).

The Board erred in focusing only on the alien's oral testimony in finding that her scant, generalized testimony failed to meet her burden of proof where the record showed that the alien had been encouraged to keep her testimony short due to the length of her "extensive" affidavit, which was accepted as by the Immigration Judge as the bulk of her claim. *See Mukamusoni v. Ashcroft*, 390 F.3d 110, 120-121 (1st Cir. 2004) (noting that the Board assumed the alien was credible after stating that it did not find it necessary to address the alien's credibility).

J. Omissions of Information

In a REAL ID Act case, an alien's failure to mention any connection between a purported event and his unwillingness to support the union, in his asylum application, supported an adverse credibility finding. *See Rivas-Mira v. Holder*, No. 08-1604, 2009 WL 323469 (1st Cir. Feb. 11, 2009).

Omissions in earlier statements of particularly significant events or information, in the absence of any compelling explanation, raise a doubt about credibility. *See Muñoz-Monsalve v. Mukasey*, 551 F.3d 1, 8 (1st Cir. 2008); *see also Bebri v. Mukasey*, 545 F.3d 47 (1st Cir. 2008) (concerning a major omission in a subsequent version of an alien’s asylum application, and other inconsistencies, with no explanation). The Court found this particularly true in the context of a credible fear interview, given its emphasis on eliciting “all relevant and useful information bearing on” the asylum application. *Villa-Londono v. Holder*, 600 F.3d 21, 24 (1st Cir. 2010).

Omissions from asylum application or initial asylum interview of facts central to alien’s claim supports an adverse credibility finding. *See Chanthou Hem v. Mukasey*, 514 F.3d 67, 73 (1st Cir. 2008) (finding IJ and BIA reasonable in giving weight to respondent’s failure to identify gunman in key incident in affidavit); *Gi Kuan Tai v. Gonzales*, 423 F.3d 1, 5 (1st Cir. 2005) (holding that alien’s failure to mention wife’s abortion or issue of contraception were facts going to heart of claim and noting that it was “difficult to imagine what could be more central to a claim of asylum than the question of whether the events on which it was based ever happened”).

Omission of several key events from hearing testimony (until prompted to do so on cross-examination), plus failure to remember significant details, or even the basic time line, of events, may form basis of adverse credibility finding. *Diaz-Garcia v. Holder*, 609 F.3d 21, 27 (1st Cir. 2010).

An alien’s failure to mention facts central to his or her claim prior to hearing may result in inference of reason other than lack of credibility, such as alien did not think facts relevant or was embarrassed to mention facts, but such reasons do not compel a finding that those inferences must be accepted. *See Gi Kuan Tai v. Gonzales*, 423 F.3d 1, 5 (1st Cir. 2005).

K. Opportunity to Explain

Even if the explanation for an inconsistency is on its face reasonable and consistent, an IJ need not accept it as true; he or she may still evaluate such explanation by weighing its plausibility or assessing the respondent’s credibility. *Weng v. Holder*, 593 F.3d 66, 72 (1st Cir. 2009).

The Court appears to find, without explicitly holding, that an alien’s explanations for inconsistencies and implausibilities is not sufficient to overcome an adverse credibility finding where such explanation is not reasonable. *See Stroni v. Gonzales*, 454 F.3d 82, 89 (1st Cir. 2006) (agreeing that the Immigration Judge properly rejected the alien’s explanations where such explanations consisted of blaming others for discrepancies, claiming his affiants were confused when recounting events in their affidavits, and where the alien had “improbable memory lapses” and changed his testimony). *See also Cuko v. Mukasey*, 522 F.3d 32, 39 (1st Cir. 2008) (where the alien was provided an opportunity to explain the discrepancies).

1. Explanation Required

A well-reasoned explanation by the IJ and Board would likely require, first specific findings with record support that the alien lied or evaded answering or was significantly inconsistent in his responses to subsidiary questions and second, consideration of the alien's reasons for inconsistencies. The court referred to the maxim "*falsus in uno, falsus in omnibus.*" *Castenada-Castillo v. Gonzales*, 488 F.3d 17 (1st Cir. 2007) (en banc). The explanation of "printing errors" for inconsistencies between an asylum officer's report and an alien's testimony, was not persuasive. See *Lutaaya v. Mukasey*, 535 F.3d 63, 71 (1st Cir. 2008).

2. Explanation not Required

NO CASES LISTED

L. REAL ID Act

REAL ID Act disavows the "heart of the matter" rule. *Rivas-Mira v. Holder*, 556 F.3d 1, 4 (1st Cir. Feb. 11, 2009). In any event, one of the inconsistencies was not a "minor blemish," as the alien's asylum application failed to mention any connection between a purported incident and the alien's unwillingness to support the union, and collectively, viewed in light of the "totality of the circumstances," the court affirmed the adverse credibility finding. *Id.* at 5.

In a REAL ID Act case, the court affirmed the Board's denial of relief based on a failure to produce corroborating evidence, where the Board did not reach the issue of the Immigration Judge's adverse credibility determination. The alien failed to submit his Canadian asylum application or any original, authentic document to establish his identity, a threshold issue for asylum. The court noted that the absence of the documents was particularly notable given that Canada is a friendly government and that the alien originally entered the United States under a false name. See *Khan v. Mukasey*, 541 F.3d 55 (2008); see also *Chhay v. Mukasey*, 540 F.3d 1, 6-7 (1st Cir. 2008) (where an Immigration Judge's decision, in a REAL ID Act case, based on a failure to provide corroboration was upheld). See also *Balachandran v. Holder*, 566 F.3d 269, 273 (1st Cir. 2009) (finding it reasonable to expect the respondent to secure documentation from family in Canada) (REAL ID Act case).

In a pre-REAL ID Act case, the court noted that for REAL ID Act cases, the factfinder is entitled to consider "*falsus in uno, falsus in omnibus.*" See *Castenada-Castillo v. Gonzales*, 488 F.3d 17, 23 n.6 (1st Cir. 2007) (en banc).

In a pre-REAL ID Act case, the court noted that for REAL ID Act cases, minor discrepancies may be considered in determining credibility. See *Lutaaya v. Mukasey*, 535 F.3d 63, 70 n.8 (1st Cir. 2008).

The Court has no jurisdiction over questions of fact under the REAL ID Act, and thus has no jurisdiction over the factual determination that an alien's asylum application was untimely filed. See *Mehilli v. Gonzales*, 433 F.3d 86, 93 (1st Cir. 2005). See also *Chahid Hayek v. Gonzales*, 445 F.3d 501, 506-07 (1st Cir. 2006) (relying upon *Mehilli* to find no jurisdiction over alien's claim that the Board erred in finding her asylum application not timely filed).

Although the Court has no jurisdiction over discretionary relief, the Court does have jurisdiction, pursuant to the REAL ID Act, over constitutional claims and questions of law where such are raised in relation to the denial of discretionary relief. *See De Araujo v. Gonzales (de Araujo II)*, 457 F.3d 146, 153-54 (1st Cir. 2006).

A constitutional claim under the REAL ID Act would have to be “colorable” in order to provide the Court with jurisdiction. *See De Araujo v. Gonzales (de Araujo II)*, 457 F.3d 146, 154 (1st Cir. 2006); *Elysee v. Gonzales*, 437 F.3d 221, 223 (1st Cir. 2006) (noting that to obtain review of Board discretionary decisions, an alien must first make a colorable claim that a constitutional issue or question of law exists, *citing Mehilli v. Gonzales*, 433 F.3d 86, 93-94 (1st Cir. 2005)). But such a claim cannot arise from a challenge to the agency’s decisions whether to exercise its discretion to grant relief. *See De Araujo v. Gonzales (de Araujo II)*, 457 F.3d 146, 154 (1st Cir. 2006).

Characterizing an issue, such as the untimely filing of an asylum application, as a constitutional claim will not bring the issue within the Court’s jurisdiction under the REAL ID Act where the claim is not colorable. *See De Araujo v. Gonzales (de Araujo II)*, 457 F.3d 146, 154 (1st Cir. 2006); *Mehilli v. Gonzales*, 433 F.3d 86, 93-94 (1st Cir. 2005) (stating that an alien cannot create jurisdiction where Congress has removed it).

SEE ALSO: In an issue regarding the equitable tolling of untimely motions, the Court addresses issues about the REAL ID Act which might also be of assistance outside of the motions and equitable tolling context. The Court found that it lacked jurisdiction under the REAL ID Act over questions of fact, which included claims that the Board erred in denying the alien’s motion to reopen, because the Board’s finding that the untimeliness of the motion to reopen would not be equitably tolled due to lack of due diligence by the alien is a factual determination. *See Boakai v. Gonzales*, 447 F.3d 1, 4 (1st Cir. 2006) (noting that the Court had still not determined whether the Board has the authority to excuse the late filing of motions to reopen under the equitable tolling doctrine).

NOTE 1: In a footnote, the Court rejected the government’s suggestion that the Court adopt a rule that “no question committed to the BIA’s discretion may ever constitute a “question of law” within the REAL ID Act” and stated that “[t]here is no need for such a broad ruling.” *See Boakai v. Gonzales*, 447 F.3d 1, 4 n. 6 (1st Cir. 2006).

NOTE 2: The Court cites to *Niehoff v. Maynard*, 299 F.3d 41, 47 (1st Cir. 2002) regarding which aspect of the equitable tolling doctrine involves questions of law versus questions of fact. This case might be useful to ascertain the Court’s direction in future immigration cases involving jurisdictional issues raised by the REAL ID Act.

M. Responsiveness to Questions

The Board's determination that the alien presented evasive testimony regarding the issue of human rights abuses by the military in Peru, which the Board found supported the Immigration Judge's adverse credibility finding, was not supported by the record. *See Castenada-Castillo v. Gonzales*, 488 F.3d 17 (1st Cir. 2007) (en banc). *See also Diaz-Garcia v. Holder*, 609 F.3d 21, 27, n.7 (1st Cir. 2010).

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

An Immigration Judge is entitled to require corroboration of self-serving testimony, where the corroboration appears readily obtainable. *See Muñoz-Monsalve v. Mukasey*, 551 F.3d 1, 8 (1st Cir. 2008); *Balachandran v. Holder*, 566 F.3d 269, 273 (1st Cir. 2009).

Where an alien has been found to be not credible, it is not error to then observe that corroborating evidence could only have helped an alien's claim where some corroborating evidence was "likely available" but none had been submitted. *See Lutaaya v. Mukasey*, 535 F.3d 63 (1st Cir. 2008); *Kheireddine v. Gonzales*, 427 F.3d 80, 87-88 (1st Cir. 2005), *citing Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997).

It is not error to find an alien who has already been found to be not credible even less credible when the alien fails to support his or her claim with reasonably available corroborating evidence. *See Kheireddine v. Gonzales*, 427 F.3d 80, 87 (1st Cir. 2005), *citing Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998) and *Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997).

The Court noted in passing that it is reasonable to expect corroborating evidence from a "modern" country, such as Greece, compared to war or genocide ravaged countries, such as Rwanda. *See Diab v. Ashcroft*, 397 F.3d 35, 40 n.5 (1st Cir. 2005).

In a REAL ID Act case, the court affirmed the Board's denial of relief based on a failure to produce corroborating evidence, where the Board did not reach the issue of the Immigration Judge's adverse credibility determination. The alien failed to submit his Canadian asylum application or any original, authentic document to establish his identity, a threshold issue for asylum. The court noted that the absence of the documents was particularly notable given that Canada is a friendly government and that the alien originally entered the United States under a false name. *See Khan v. Mukasey*, 541 F.3d 55 (2008); *see also Chhay v. Mukasey*, 540 F.3d 1, 6-7 (1st Cir. 2008) (where an Immigration Judge's decision, in a REAL ID Act case, based on a failure to provide corroboration was upheld); *Mendez-Berrera v. Holder*, 602 F.3d 21, 24, n.2 (BIA 2010).

1. If Testimony is Credible

If an alien's testimony is credible, such testimony may be sufficient to meet the alien's burden of proof without corroborating evidence. *See Dhima v. Gonzales*, 416 F.3d 92, 95 (1st Cir. 2005), *citing* 8 C.F.R. § 1208.13(a).

The weaker an alien's asylum claim, the greater the need for corroborating evidence. See *Mukamsoni v. Ashcroft*, 390 F.3d 110, 120-121 (1st Cir. 2004) (finding Board erred in requiring corroborating evidence where asylum claim not weak, in overstating the role of absent evidence, and ignoring the presence of the bulk of the corroborating evidence), citing *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

NOTE: The Court in *Mukamsoni v. Ashcroft*, 390 F.3d 110, 120-121 (1st Cir. 2004) explicitly disagreed with the Board's assessment of the alien's psychological evaluation (which found that the alien suffered from post-traumatic stress disorder). The Board gave the assessment less weight and found that it undercut the alien's claim because the doctor noted that the alien came to only 2 sessions after the initial asylum evaluation and re-contacted the doctor only after her final hearing date was set. The Court found that these facts did not undercut the diagnosis which was based upon an evaluation premised on the alien's asylum claim.

2. If Testimony is **not** Credible

Because the IJ can disregard or discount evidence he finds incredible, "an adverse credibility determination can prove fatal to a claim for ... withholding of removal" if the applicant cannot meet his burden of proof without relying on his own testimony. *Melhem v. Gonzales*, 500 F. 3d 78 (1st Cir. 2007), citing *Pan v. Gonzales*, 489 F.3d 80, 86 (1st Cir. 2007).

Where the asylum applicant's testimony was "problematic," the IJ correctly discounted corroborative evidence where (1) photocopies were submitted rather than originals; (2) the copies contained handwritten entries, one of which misstated the respondent's age; (3) a newspaper article mentioning the respondent was in a different font from the rest of the newspaper, and dated days after its purported sender was purportedly imprisoned for 9 months. *Makalo v. Holder*, 612 F.3d 93 (1st Cir. 2010).

If an alien is not "entirely" credible, corroborating evidence may be used to "bolster" the alien's credibility. See *Dhima v. Gonzales*, 416 F.3d 92, 95 (1st Cir. 2005), quoting *Diab v. Ashcroft*, 397 F.3d 35, 40 (1st Cir. 2005).

It was not error for an Immigration Judge to find that the alien had not corroborated his testimony of a key event through testimony or affidavits from his family members who were in the United States as such evidence was likely available, two relatives appeared at a prior hearing, the alien was in contact with his family and lived with his brother. See *Albathani v. INS*, 318 F.3d 365, 373-74 (1st Cir. 2003); see also *Makalo v. Holder*, 612 F.3d 93, 97 (1st Cir. 2010) (noting the respondent's failure to provide evidence such as birth certificates or affidavits from family members where his testimony and other corroboration were properly deemed unreliable); *Melhem v. Gonzales*, 500 F.3d 78, 81-82 (1st Cir. 2007) (Given the alien's close contact with his family the presence of his family in the area at the time of hearing, failure to offer corroboration from the family was notable, particularly where the Immigration Judge sought such corroboration at a preliminary hearing).

B. Airport Statements

The Immigration Judge did not err in relying upon alien's statement at airport interview that he had never been arrested to find alien not credible as the issue of whether the alien had been arrested went to the heart of his asylum claim and alien had not provided any reasons regarding why denial of political arrests was necessary in order to be admitted to the United States. *See Ymeri v. Ashcroft*, 387 F.3d 12, 20 (1st Cir. 2004) (distinguishing these circumstances from that of the alien in *Akinmade v. INS*, 196 F.3d 951, 955-56 (9th Cir. 1999) where the alien misstated facts for the purpose of gaining entry). *See also Simo v. Gonzales*, 445 F.3d 7, 11-12 (1st Cir. 2006) (material inconsistencies between an airport interview and testimony may support an adverse credibility finding where no reason is offered to resolve the inconsistencies).

C. Authentication of Documents

An Immigration Judge's finding that the documentation provided by the alien did not overcome the adverse credibility finding is supported by the record where the Immigration Judge found that the corroborating documents were not authenticated and the alien had failed to lay a foundation for them. *See Mei Guan Lin v. Ashcroft*, 371 F.3d 18, 22 (1st Cir. 2004). In this case, the Court also noted that the alien had offered no authentication and had not "attempted through the minimal effort of having the official seals recognized by the American consulate in China." *See Mei Guan Lin v. Ashcroft*, 371 F.3d 18, 22 (1st Cir. 2004).

"[A]uthentication requires nothing more than proof that a document or thing is what it purports to be and, even though the Federal Rules of Evidence spell out various options, the rules also stress that these options are not exclusive and the central condition can be proved in any way that makes sense in the circumstances." *Yongo v. INS*, 355 F.3d 27, 30-31 (1st Cir. 2004) (finding authenticated German immigration documents supported Immigration Judge's adverse credibility finding and noted that the authentication requirements of 8 C.F.R. § 1287.12 provide one method, but not the exclusive means, by which a document can be authenticated).

NOTE: The Court in *Yongo* discussed the Board's decision in *Matter of O-D-*, 21 I&N Dec. 1079 (BIA 1998) regarding false documentation. *See Yongo v. INS*, 355 F.3d 27, 32-33 (1st Cir. 2004).

D. Department of State Country Reports

The State Department "has acknowledged expertise in discerning the conditions that prevail in foreign lands" and thus its reports are generally probative evidence of country conditions. *See Palma-Mazariegos v. Gonzales*, 428 F.3d 30, 36 (1st Cir. 2005). *See also Tota v. Gonzales*, 457 F.3d 161, 166 (1st Cir. 2006) (noting that State Department Profile was generally probative of country conditions although its "advice" was not binding); *Negeya v. Gonzales*, 417 F.3d 78, 84 (1st Cir. 2005) (referring to the Country Report as "authoritative documentary evidence" which upholding the Immigration Judge's decision and noting that where the Immigration Judge has conflicting documentary reports from various sources to review, the choice as to which reports to

rely upon is left to the fact finder and not the Court). While country condition reports are generally persuasive, their contents “do not necessarily override petitioner-specific facts-nor do they always supplant the need for particularized evidence in particular cases.” *Diaz-Garcia v. Holder*, 609 F.3d 21, 28 (1st Cir. 2010) (citing *Seng v. Holder*, 584 F.3d 13, 20 (1st Cir. 2009)).

The Department of State Country Reports are “generally persuasive of country conditions but are open to contradiction.” *See Zarouite v. Gonzales*, 424 F.3d 60, 63 (1st Cir. 2005) (citations omitted); *Gailius v. INS* 147 F.3d 34, 45 (1st Cir. 1998) (the State Department’s “advice” is not generally binding).

The Country Reports, as well as other evidence of country conditions from international organizations, private voluntary agencies, news organizations, and academic institutions, are routinely used to corroborate an alien’s claim and should be evaluated, even in the absence of an adverse credibility finding, to determine if they support an alien’s claim. *See Mukamusoni v. Ashcroft*, 390 F.3d 110, 123-24 (1st Cir. 2004). *See generally, Xue Xiang Chen v. Gonzales*, 418 F.3d 110, 114 (1st Cir. 2005) (finding that Immigration Judge properly used Country Report as background evidence of country conditions and had not, as claimed by alien, used the information to treat alien as a member of a suspect class of persons so as to deny his asylum claim).

Where past persecution has been found or presumed, a Department of State Country Report “convincingly demonstrates material changes in country conditions that affect the specific circumstances of an asylum seeker’s claim, the report may be sufficient, in and of itself, to rebut the presumption of future persecution.” *See Palma-Mazariegos v. Gonzales*, 428 F.3d 30, 36 (1st Cir. 2005); *see also Ly v. Mukasey*, 514 F.3d 126, 133 (1st Cir. 2008) (country reports, “in the absence of specific evidence to the contrary” rebutted the presumption of past persecution based on information of the political landscape and a decrease in politically-motivated violence).

An Immigration Judge’s focus on facts in country reports that are relevant to an alien’s specific claim can rebut a presumption of past persecution where other evidence was also considered. The Amnesty International reports concerning Albania predated the country reports and the Immigration Judge also considered the alien’s own testimony concerning recent events. *See Uruci v. Holder*, 558 F.3d 14 (1st Cir. 2009).

Focused examination of a Country Report to an alien’s claim is sufficient to support an Immigration Judge’s or the Board’s decision but “cursory statements or broad-brush generalizations” about changed country conditions will not support a decision. *See Palma-Mazariegos v. Gonzales*, 428 F.3d 30, 36 (1st Cir. 2005).

NOTE: While the *Palma-Mazariegos* case involves an issue of whether the presumption of future persecution has been rebutted, the Court’s analysis of the use of Country Reports and

the level of examination and discussion of such reports is equally relevant where the reports are used to support an adverse credibility finding.

The information from the Department of State does not “automatically” trump an alien’s “specific evidence.” See *Tota v. Gonzales* 457 F.3d 161, 166 (1st Cir. 2006); *Waweru v. Gonzales*, 437 F.3d 199, 203 (1st Cir. 2006); *Zarouite v. Gonzales*, 424 F.3d 60, 63-64 (1st Cir. 2005).

NOTE: The generalized information about country conditions from the Department of State does not, without more, rebut a presumption of a well-founded fear of persecution. See *Tota v. Gonzales*, 457 F.3d 161, 166 (1st Cir. 2006); *Palma-Mazariegos v. Gonzales*, 428 F.3d 30, 35 (1st Cir. 2005).

Where a Board decision focused only on significant inconsistencies, the court saw no reason to surmise that the Board had overlooked the background information. See *Lin v. Mukasey*, 521 F.3d 22, 28 (1st Cir. 2008).

The Court upheld an adverse credibility finding based upon alien’s inconsistencies, lack of detail regarding a key event, corroborating affidavits that were unsigned, and contradictory information in the Department of State Country Report. See *Njenga v. Ashcroft*, 386 F.3d 335, 339-40 (1st Cir. 2004).

The Board errs in paraphrasing parts of the Department of State Country Reports without discussing or examining those portions of the reports which support an alien’s asylum claim. See *Zarouite v. Gonzales*, 424 F.3d 60, 63-64 (1st Cir. 2005) (discussing in depth how the Board’s decision erred by comparing and contrasting the information in the Country Report with the Board’s decision and the alien’s testimony). See also *Castenada-Castillo v. Gonzales*, 488 F.3d 17, 24 (1st Cir. 2007) (en banc). However, the Court found no reversible error in the Board’s failure to mention the country reports, holding that “[t]he law...does not obligate the agency to ‘dissect in minute detail every contention that a complaining party advances.’” *Lopez Perez v. Holder*, 587 F.3d 456 (1st Cir. 2009) (citing *Raza v. Gonzales*, 484 F.3d 125, 128 (1st Cir. 2007)).

The Department of State Country Reports are misused when used “solely as a test of direct corroboration, rather than for the purposes of providing context and generalized credibility assessment.” *El Moraghy v. Ashcroft*, 331 F.3d 195, 204 (1st Cir. 2003) (finding that the Immigration Judge, who did not make an adverse credibility finding, appeared to have relied upon the report to specifically refer to the alien or his family rather than as a source of information on

general or changed conditions in Egypt which may, or may not, have corroborated the alien's testimony).

The Immigration Judge's reliance on the Department of State Country Report to support an adverse credibility finding, where the Immigration Judge found the alien's testimony at odds with the information contained in the Country Report, was error where the alien had provided other corroborating evidence to support his claim, including translated copies of the threatening letters and his father's testimony. *See Gailius v. INS*, 147 F.3d 34, 45 (1st Cir. 1998).

E. False Documents, including False Statements

An alien's use of false documents, if not "satisfactorily explained, may reflect directly and adversely on [an alien's] overall credibility." *See Olujoke v. Gonzales*, 411 F.3d 16, 22 (1st Cir. 2005) (finding alien's use of false documents to enter the United States and presentation of fraudulent birth certificate to Immigration Judge to support Immigration Judge's adverse credibility finding where Immigration Judge noted that there could be a good reason for the creation and use of false documents to flee persecution but such reason was not presented in this case where no explanation was presented as to why the alien could not have obtained genuine travel documents).

An alien's fraudulent asylum application, coupled with false testimony under oath before an asylum officer, support a finding that the alien had a "propensity to dissemble under oath." *See Laurent v. Ashcroft*, 359 F.3d 59, 64 (1st Cir. 2004).

An alien's false testimony in support of her husband's asylum application [in a separate hearing before an Immigration Judge] supports a finding that in her own asylum hearing, she has a "propensity to dissemble under oath." *See Toure v. Ashcroft*, 400 F.3d 44, 48 (1st Cir. 2005), quoting *Laurent v. Ashcroft*, 359 F.3d 59, 64 (1st Cir. 2004). *See also Lin Qin v. Ashcroft*, 360 F.3d 302 (1st Cir. 2004); *Yongo v. INS*, 355 F.3d 27, 33 (1st Cir. 2004).

F. New Evidence on Appeal

NO CASES LISTED

SECOND CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

In *Xiu Xia Lin v. Mukasey*, 534 F.3d 162 (2d Cir. 2008), the United States Court of Appeals for the Second Circuit addressed its pre-REAL ID credibility analysis pursuant to *Secaida-Rosales v. INS*, 331 F.3d 297 (2d Cir. 2003), and its post-REAL ID credibility analysis. After discussing both, the court affirmed the adverse credibility finding under the REAL ID Act, but implied that it would have been inadequate under the pre-REAL ID caselaw.

An IJ's analysis detailing reasons for doubting the respondent's credibility may be sufficient to constitute an explicit credibility finding. *Zaman v. Mukasey*, 514 F.3d 233, 237 (2d Cir. 2008).

The Board should have considered counsel's disbarment where counsel was disbarred while the case was pending before the Board and the IJ's finding of lack of credibility rested almost exclusively on the presumption that counsel acted competently. *Yang v. Gonzales*, 478 F.3d 133, 143-44 (2d Cir. 2007).

The Court, pursuant to the government's request for rehearing of *Liu v. INS*, 475 F.3d 135, 138-39 (2d Cir. 2007), found that it lacked jurisdiction to review the IJ's determination denying alien's application for asylum as untimely, but it was not barred from reviewing IJ's adverse credibility determination with respect to withholding of removal and protection under the Convention Against Torture. *Liu v. INS*, 508 F.3d 716 (2d Cir. 2007) ("although the REAL ID Act restores [the Court's] jurisdiction to review 'constitutional claims or questions of law,' 8 U.S.C. § 1252(a)(2)(D), [the Court] remain[s] deprived of jurisdiction to review decisions under the INA when the petition for review essentially disputes the correctness of an IJ's fact-finding or the wisdom of his exercise of discretion and raises neither a constitutional claim nor a question of law." *Liu v. INS*, 508 F.3d 716, 720 -721 (2d Cir. 2007) (quoting *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 327 (2d Cir. 2006))).

While a credibility finding is specific to each petitioner and that finding must be detailed, specific and rooted in the evidentiary record, the same is not true for facts relating to the state of affairs and history of a given country, pertaining to changed country conditions. *Hoxhallari v. Gonzales*, 468 F.3d 179, 187 (2d Cir. 2006).

Distinguishing *Hoxhallari*, the Court found that the IJ's cursory treatment of the respondent's well-founded fear claim was inadequate because the Republic of the Congo had not been a source of a large number of asylum claims that would warrant a finding that the BIA/IJ was familiar with that country's recent history. (The same President of the Republic of the Congo who held office when the respondent left the country was still in power.) The Court found that the Board did not conduct an "individualized analysis" of how changed country conditions would affect the respondent's situation. *Passi v. Mukasey*, 535 F.3d 98 (2d Cir. 2008).

The concurring judge in *Passi* emphasized that this is a rare fact pattern, and warned against overreading the limited holding in *Tambadou v. Gonzales*, 446 F.3d 298 (2d Cir. 2006).

When reversing an IJ's favorable credibility finding, the Board may not conduct its own credibility analysis (de novo review) but should point to any misstatements of fact, errors in analysis, flawed reasoning, or improper application of law and explain why the IJ's reasons were rejected or why the IJ's analysis was erroneous. *Chen v. BCIS*, 470 F.3d 509, 514 (2d Cir. 2006).

An Immigration Judge's adverse credibility finding is supportable if based upon inconsistent statements, contradictory evidence, and inherently improbable testimony. See *Diallo v. INS*, 232 F.3d 279, 287-88 (2d Cir. 2000) (also holding that specific, detailed testimony which is consistent and persuasive and establishes an alien's well-founded fear of return is sufficient to meet an alien's burden of proof without corroborating evidence). See *Iouri v. Ashcroft*, 487 F.3d 76 (2d Cir. 2007) *modifying and superseding* (on other grounds), 464 F.3d 172 (2d Cir. 2006) (discussing how the various points identified by the Immigration Judge supported the adverse credibility finding). See also *Jian Hui Shao v. BIA*, 465 F.3d 497, 500 (2d Cir. 2006), *remanded on another ground, J-H-S-*, 24 I&N Dec. 196 (BIA 2007) (finding IJ's adverse credibility determination supported by inconsistencies between the alien's testimony and asylum application, by inconsistencies between the alien's testimony and asylum interview, by demeanor, and by an implausible aspect of the story).

An Immigration Judge's adverse credibility finding must set forth specific, cogent reasons for such findings and there must be a "legitimate nexus" between these reasons and the alien's claim of persecution (i.e. the reasons must be material and go to the heart of the alien's claim). See *Majidi v. Gonzales*, 430 F.3d 77, 79-80 (2d Cir. 2005), *citing Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003), and *Xu Duan Dong v. Ashcroft*, 406 F.3d 110, 112 (2d Cir. 2005).

SEE ALSO: "As frequently has been held, while an [Immigration Judge's] application of the maxim *falsus in uno, falsus in omnibus* may at times be appropriate, an applicant's testimonial discrepancies – and, at time even outright lies – must be weighed in light of their significance to the total context of his or her claim of persecution. See *Zhong v. U.S. Dep't of Justice*, 480 F.3d 104, 127 (2d Cir. 2007), *amending and superseding*, 461 F.3d 101 (2d Cir. 2006) (discussing the "dimension of proportionality" required when weighing whether an inconsistency is minor or substantial).

Although an Immigration Judge is required to support an adverse credibility finding with specific, cogent reasons, an Immigration Judge is not required to “consider the centrality *vel non* of each individual discrepancy or omission before using it as the basis for an adverse credibility determination. Rather the [Immigration Judge] may rely upon the ‘cumulative impact of such inconsistencies.’” *See Liang Chen v. U.S. Att’y Gen.*, 454 F.3d 103, 107 (2d Cir. 2006), quoting *Xiao Ji Chen v. United States Dept. of Justice*, 434 F.3d 144, 160 n.15 (2d Cir. 2006).

“Where the [Immigration Judge’s] adverse credibility finding is based on specific examples in the record of inconsistent statements by the asylum applicant about matters material to his claim of persecution, or on contradictory evidence or inherently improbable testimony regarding such matters, a reviewing court will generally not be able to conclude that a reasonable adjudicator was compelled to find otherwise.” *See Xian Tuan Ye v. DHS*, 446 F.3d 289, 294 (2d Cir. 2006), quoting *Zhou Yun Zhang v. INS*, 386 F.3d 66, 74 (2d Cir. 2004).

NOTE: “Where, as here, the BIA agrees with the [Immigration Judge’s] conclusion that [an alien] is not credible and, without rejecting any of the [Immigration Judge’s] grounds for decision, emphasizes particular aspects of that decision, we will review both the BIA’s and [Immigration Judge’s] opinion – or more precisely, we review the [Immigration Judge’s] decision including the portions not explicitly discussed by the BIA.” *See Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005).

Where the Board finds an alien not credible based upon an inconsistency not mentioned in the Immigration Judge’s decision, the Board does not engage in impermissible fact-finding where the inconsistencies were based upon facts of record [in this case an Immigration Judge’s prior decision in the alien’s case]. *See Xian Tuan Ye v. DHS*, 446 F.3d 289, 296 (2d Cir. 2006).

Where the Board affirms an Immigration Judge’s adverse credibility finding but does not affirm the Immigration Judge’s alternate holding, the alternate holding is not properly before the Court and thus cannot be vacated or reversed. *See Jin Yu Lin v. United States Dept. of Justice*, 413 F.3d 188, 191 n.4 (2d Cir. 2005). *See also Yan Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005) (discussing which parts of a Board decision versus an Immigration Judge’s decision is reviewable depending upon language used in Board decision dismissing alien’s appeal).

1. Religious Persecution

In a claim of religious persecution, it is error to find an alien not credible due to the alien’s responses to doctrinal questions where the Immigration Judge did not state why the alien’s testimony regarding his religious background, baptism, religious practice in the United States, and reasons for joining the religion were not credible or where the Immigration Judge did not question the alien’s responses. *See Rizal v. Gonzales*, 442 F.3d 84, 89-90 (2d Cir. 2006) (noting in footnote 7 that an alien may have

a valid asylum claim under an “imputed religion” theory where he or she is believed, incorrectly, to be an adherent of a particular religion).

NOTE: The Court explicitly stated that it was not holding that doctrinal questions were never relevant and opined that such questions would be relevant where an alien claimed to be a teacher or expert in a particular religion. *See Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir. 2006).

BUT SEE: *(Surinder) Singh v. BIA*, 438 F.3d 145 (2d Cir. 2006) (finding that Immigration Judge’s adverse credibility finding was supported by the record where the Immigration Judge based finding on alien’s testimony regarding questions about his Sikh faith and the alien’s explanations for inconsistencies).

B. Asylum Application

Given that the Court was unsure of the basis for the adverse credibility finding other than a general reference to an inconsistency between the respondent’s testimony and his asylum application, it remanded the case to allow the agency to specify the bases on which it relied. *See Balchova v. Mukasey*, 547 F.3d 374, 387 (2d Cir. 2008), *quoting cf. Song Jin Wu v. INS*, 436 F.3d 157, 164 (2d Cir.2006) (“It is not the function of a reviewing court in an immigration case to scour the record to find reasons why a[n agency] decision should be affirmed. Rather, we take the [agency's] decision as we find it, and if the reasoning it advances for denying a petitioner's claim cannot support the result, we will vacate the decision.”)

An asylum applicant is not required to set forth all of his or her reasons for fearing return to his or her home country on the asylum application and omission of persecutory incidents from that application are not necessarily fatal to his or her claim. *See Pavlova v. INS*, 441 F.3d 82, 90 (2d Cir. 2006).

Significant differences of account of events as related in the asylum application and alien’s testimony supported Immigration Judge’s adverse credibility finding where the differences were not of omitted details but rather were material discrepancies. *See Borovikova v. United States Dept. of Justice*, 435 F.3d 151, 159-60 (2d Cir. 2006). *See also Jian Hui Shao v. BIA*, 465 F.3d 497, 500 (2d Cir. 2006), *remanded on another ground, J-H-S-*, 24 I&N Dec. 196 (BIA 2007) (finding IJ’s adverse credibility determination supported by inconsistencies between the alien’s testimony and asylum application).

BUT SEE: *Niang v. Mukasey*, 511 F.3d 138, 147 (2d Cir. 2007) when taken together and cured of factual errors, the IJ's speculations support suspicions that the documents were not genuine. But, given the tenuousness of these suspicions, they cannot ground an adverse credibility determination, where petitioner's testimony was otherwise convincing and consistent, and where the IJ stated expressly that he heard nothing that “sounded made up.” Compare “inauthentic document” v. “invented testimony.”

The Immigration Judge erred by failing to consider the alien's explanation for the discrepancies between his testimony and the contents of his asylum application where the alien stated that he signed a blank application and advised that the application contained errors and where the application itself did not contain a signature for the preparer of the form. *See Zhi Wei Pang, v. Bureau of Citizenship and Immigration Services*, 448 F.3d 102, 108 (2d Cir. 2006). *See generally, Pavlova v. INS*, 441 F.3d 82 (2d Cir. 2006) (stating that an Immigration Judge should ascertain the circumstances under which the asylum application was prepared in order to determine whether the inconsistencies between an alien's testimony and information in the asylum application can be attributed to the alien).

C. Asylum Officer Interview

Where an alien's explanation for a discrepancy before an asylum officer is different from the explanation provided for the same discrepancy before the Immigration Judge, the Immigration Judge could properly find the alien to be not credible. *See Diallo v. Gonzales*, 445 F.3d 624, 630 (2d Cir. 2006).

Asylum interviews and airports interviews are different and there are good reasons for treating such interviews differently when evaluating an alien's credibility. *See Diallo v. Gonzales*, 445 F.3d 624, 631 (2d Cir. 2006) (finding that closely examining the reliability of asylum interviews is not as pressing as for airport interviews).

NOTE: The Court observed that the Board provided useful guidance for analyzing an asylum interview in its decision in *Matter of S-S-*, 21 I&N Dec. 121, 123 (BIA 1995), and noted that the asylum interview summary in the case before it met the minimum standard enunciated by the Board in *Matter of S-S-*, *supra*. *See Diallo v. Gonzales*, 445 F.3d 624, 632 (2d Cir. 2006).

D. Conjecture and Speculation

The IJ's adverse credibility finding amounted to an exercise of "caprice" because of its heavy reliance upon two improper considerations: (1) its false assumption that Zheng was required to prove that he faced persecution at the hands of Chinese national authorities and (2) its attention to the irrelevant issue of whether or not Zheng had truthfully expressed a desire to father additional children, which had no legitimate nexus to his claim that he faced persecution should he be returned to China. *Zheng v. Mukasey*, 552 F.3d 277, 287-89 (2d Cir. 2009).

The speculation that inheres in inference is not "bald" if the inference is made available to the factfinder by record facts, or even a single fact, viewed in the light of common sense and ordinary experience. So long as an inferential leap is tethered to the evidentiary record, the court will accord deference to the finding. *Gao v. BIA*, 482 F.3d 122, 134 (2d Cir. 2007) *citing Felix Norbert Siewe*

v. Gonzales, 480 F.3d 160, 168-69 (2d Cir. 2007). *See also Yan v. Mukasey*, 509 F. 3d 63, 67-68 (2d Cir. 2007).

Analytic errors, such as misstatements of fact, “bald speculation or caprice,” unreasonable demands for corroborating evidence from otherwise credible aliens, overreliance on airport interviews and accounts which “do not bear indicia of reliability,” and reliance on inconsistencies which are not “dramatic” or self-evident for which the alien was not provided an opportunity to explain, will not support an adverse credibility finding. *See Li Hua Lin v. U.S. Dept. of Justice*, 453 F.3d 99, 104 (2d Cir. 2006) (noting that relatively minor errors by an Immigration Judge which do not affect the outcome of the proceeding will be construed as harmless error) (citations omitted).

NOTE: The Court in *Li Hua Lin v. U.S. Dept. of Justice*, 453 F.3d 99, 105-109 (2d Cir. 2006), discussed at length its prior decisions in *Cao He Lin v. U.S. Dept. of Justice*, 428 F.3d 391 (2d Cir. 2005) and *Xiao Ji Chen v. U.S. Dept. of Justice*, 434 F.3d 144 (2d Cir. 2006), and reconciled the apparent differences between them regarding when a remand to the Board is necessary where the Board affirmed or adopted Immigration Judges’ decision which contain errors regarding an alien’s credibility or need for corroborating evidence.

SEE: *Lin v. U.S. Dept. of Justice*, 453 F.3d 99, 110 -111 (2d Cir. 2006) finding the IJ's adverse credibility determination was based on speculation upon speculation. (The IJ found [Lin’s] account “absolutely” incredible, concluding that, based on the “judicial [ly] notice[d] ... fact that an individual's ... thigh muscles ... are ... probably [the] strongest muscles in a person[']s body[,] [a]ny person who would be subjected to the pain that [Lin] described would involuntarily react to that by vigorously moving her hips or thighs, which of course would mean that it would be impossible for the doctor to perform such a precise surgical incision [and] to locate the fallopian tubes and proceed to cut them in such a precise manner.” Moreover, the IJ said, he “would further find difficult to believe that in China sterilization procedures would be performed in such a manner [because] it would make no sense to sterilize individuals under those conditions where most of the time the sterilization would not be possible to complete successfully.” Accordingly, the IJ concluded that he “absolutely ... under no circumstances [could] find [Lin's] testimony as to how this sterilization was performed to be credible.”)

The Immigration Judge erred in finding the alien not credible based upon impermissible conjecture that the alien had failed to protect his wife’s pregnancy by remaining in their home village. *See Zhi Wei Pang, v. Bureau of Citizenship and Immigration Services*, 448 F.3d 102, 109 (2d Cir. 2006).

NOTE: The Court found that the Immigration Judge had also failed to develop the record on this issue which further undermined this basis for finding the alien not credible. *See Zhi Wei Pang, v. Bureau of Citizenship and Immigration Services*, 448 F.3d 102, 110-111 (2d Cir. 2006). The Court later stated that an Immigration Judge has an affirmative obligation to help develop the record. *See Zhi Wei Pang, v. Bureau of Citizenship and Immigration*

Services, 448 F.3d 102, 111 (2d Cir. 2006), citing *Secaida-Rosales v. INS*, 331 F.3d 297, 306 (2d Cir. 2003).

An Immigration Judge erred in basing adverse credibility finding, in part, on speculation and conjecture that the applicant's birth control certificates appeared fabricated where the DHS had not made any attempt to determine their authenticity and the alien testified sufficiently to explain the apparent discrepancies and authenticate the documents. See *Jin Chen v. United States Dept. of Justice*, 426 F.3d 104, 115 (2d Cir. 2005).

E. Credibility v. Plausibility

BAD ACF: The IJ did not consider the respondent's plausible explanation regarding the confusion of his actual wedding date. *Xiao Kui Lin v. Mukasey*, 553 F.3d 217 (2d Cir. 2009).

GOOD ACF: On the basis of the entire record, the court could not disturb the IJ's finding that Li's account that she was persecuted because of her practice of Falun Gong was implausible, and her explanation did not defeat a finding otherwise. *Ying Li v. BCIS*, 529 F.3d 79 (2d Cir. 2008).

BAD ACF: The personal choices that an alien seeking asylum has made concerning marriage, children, and living arrangements should not be used to evaluate the alien's credibility concerning his claims of persecution, unless they reflect some inconsistency in a relevant portion of the applicant's testimony. *Uwais v. U.S. Att'y Gen.*, 478 F.3d 513, 517 (2d Cir. 2007) (finding the fact that the alien decided not to accompany her baby to meet his grandparents does not diminish the plausibility of her account at 519).

BUT SEE: *Yan v. Mukasey*, 509 F. 3d 63, 67-68 (2d Cir. 2007): "Any reasonable person would understand why the IJ here concluded that it is implausible that a man whose wife had just undergone the physical and emotional trauma of a forced abortion would, only days later, travel alone to another country to participate in a vacation with a tour group for no asserted purpose other than pleasure."

The Court considers claims which are found to be implausible to be, essentially, claims which are not credible. See *Ming Xia Chen v. BIA*, 435 F.3d 141, 145 (2d Cir. 2006).

NOTE: The Court sets forth its varying views on the issue of implausibility, as enunciated in prior decisions, in *Ming Xia Chen v. BIA*, 435 F.3d 141, 145 (2d Cir. 2006) (upholding Immigration Judge's finding that it was implausible that Chinese government officials, who did not have alien's address, could easily locate her in a city with a population of over 1 million inhabitants by looking in a neighborhood of young people and that it was implausible that alien could escape detention because the jailors were not paying attention).

“The point at which a finding that testimony is implausible ceases to be sustainable as reasonable and, instead, is justifiably labeled “speculation,” in the absence of an [Immigration Judge’s] adequate explanation, cannot be located with precision. *See Ming Xia Chen v. BIA*, 435 F.3d 141, 145 (2d Cir. 2006). *See generally, Xiao Ji Chen v. U. S. Dept. of Justice*, 434, F.3d 144 (2d Cir. 2006) (stating that an Immigration Judge should explain why an alien’s testimony is implausible rather than conclude that it is implausible without explanation).

An Immigration Judge errs by stating that he or she has problems with the alien’s credibility then finding that the alien’s testimony was not sufficiently credible or plausible to support the asylum claim without providing specific, cogent reasons and relating those reasons to a legitimate nexus for finding the alien not credible. *See Chun Gao v. Gonzales*, 424 F.3d 122, 131 (2d Cir. 2005).

F. Demeanor

BAD ACF: The IJ’s general observations of the respondent’s demeanor were inadequate because when carefully analyzed against the record evidence, these grounds did not provide an adequate basis for discrediting Mr. Singh's testimony. *See Singh v. Mukasey*, 553 F.3d 207, 213 (2d Cir. 2009) ([i]n determining that Mr. Singh did not enjoy the “same level of credibility” as the immigration officers, the IJ relied on general comments about Mr. Singh's demeanor, relying on “the Court's observation of him, the way he handled the questions, the way he could not look the Court in the [eye] when giving that testimony, his body language, and other factors.”)

BAD ACF: In *Liu v. INS*, 508 F.3d 716 (2d Cir. 2007), pursuant to the government’s request for a rehearing, the Court adopted its prior analysis in *Liu v. INS*, 475 F.3d 135, 138-39 (2d Cir. 2007) specifically with respect to withholding of removal and CAT, finding that the IJ's adverse credibility determination was flawed. *Liu v. INS*, 475 F.3d 135, 138 (the IJ found the alien’s demeanor “vague,” “non-responsive,” and “characterized by long delays.”)

“Demeanor is virtually always evaluated subjectively and intuitively, and an [Immigration Judge] therefore is accorded great deference on this score - no less deference than that accorded other fact-finders.” *See Tu Lin v. Gonzales*, 446 F.3d 395, 400-01 (2d Cir. 2006) (observing that evasiveness is “one of many outward signs a fact-finder may consider in evaluating demeanor and in making an assessment of credibility.”)

However, the same deference was not afforded where the Immigration Judge’s decision relied on recollections of the respondent’s demeanor during a hearing held 4 years earlier, as the IJ’s memory “may have been affected by the many similarly-situated asylum seekers who testified before him” in the interim. *Hu v. Holder*, 579 F.3d 155, 159 (2d Cir. 2009).

“A fact-finder who assesses testimony together with witness demeanor is in the best position to discern . . . whether a question that may appear poorly worded on a printed page was, in fact,

confusing or well understood by those who heard it; whether a witness who hesitated in a response was nevertheless attempting truthfully to recount what he recalled of key events or struggling to remember the lines of a carefully crafted “script”; and whether inconsistent responses were the product of innocent error or intentional falsehood.” See *Tu Lin v. Gonzales*, 446 F.3d 395, 401 (2d Cir. 2006), citing *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 (2d Cir. 2004). See also *Sansui v. Gonzales*, 445 F.3d 193, 201 (2d Cir. 2006) (upholding Immigration Judge’s adverse credibility finding which relied upon demeanor (hesitant responses not consistent with credible testimony), and inconsistent testimony).

The Court upheld an Immigration Judge’s adverse credibility finding which was based not only upon testimony which was inconsistent with the information in the asylum application and at the asylum interview, but also upon the alien’s generalized or non-responsive answers, which the Immigration Judge felt reflected answers to a memorized script. See *Xusheng Shi v. BIA*, 374 F.3d 64, 65 (2d Cir. 2004). See also *Jian Hui Shao v. BIA*, 465 F.3d 497, 500 (2d Cir. 2006), *remanded on another ground, J-H-S-*, 24 I&N Dec. 196 (BIA 2007) (finding the alien unresponsive during certain lines of questioning).

G. Embellishment

The Immigration Judge erred in denying, in the exercise of discretion, the alien’s claim for asylum based upon a finding that the claim had been embellished (number of times confronted by government officials, degree of opposition to family planning policies, hid from authorities) where the Immigration Judge had found the material aspects of the claim (forced sterilization verified by Chinese certificate and examination by American doctor) to be credible. See *Wu Zheng Huang v. INS*, 436 F.3d 89, 96, 99 (2d Cir. 2006) (describing Immigration Judge’s findings regarding the “embellishment” as a partial adverse credibility finding).

H. Inconsistent Statements

On Notice of the Inconsistent Statement: The IJ erred in finding that the State Department Country Reports concerning Guinea contradicted the applicant’s testimony. *Diallo v. U.S. Dep’t of Justice*, 548 F.3d 232, 235 (2d Cir. 2008).

“As frequently has been held, while an [Immigration Judge’s] application of the maxim *falsus in uno, falsus in omnibus* may at times be appropriate, an applicant’s testimonial discrepancies – and, at time even outright lies – must be weighed in light of their significance to the total context of his or her claim of persecution. See *Lin Zhong v. U. S. Dept of Justice*, 480 F.3d 104, 127 (2d Cir. 2007) (discussing the “dimension of proportionality” required when weighing whether an inconsistency is minor or substantial).

The BIA's use of the IJ's unchallenged conclusion that Zheng was not credible in support of its refusal to credit the authenticity of the Notice from the respondent's home town, which was

submitted with a motion to reopen, was appropriate. *Qin Wen Zheng v. Gonzales*, 500 F.3d 143, 147 (2d Cir. 2007). The BIA's decision to reject the purported notice from the respondent's home town was further buttressed by the inconsistencies between it and the “new country reports” that Zheng submitted in an attempt to demonstrate that country conditions had changed adversely and materially. *Qin Wen Zheng v. Gonzales*, 500 F.3d 143, 147 (2d Cir. 2007). See also *Siewe v. Gonzales*, 480 F.3d 160 (2d Cir.2007) and *Borovikova v. U.S. Dep't of Justice*, 435 F.3d 151 (2d Cir.2006).

1. Substantial Inconsistencies or Similarities

“Inter-proceeding similarities” (similar evidence submitted in unrelated cases) may support an adverse credibility finding where (1) the IJ carefully identifies the similarities, (2) closely considers the nature and number of the similarities and determines the plausibility of a coincidence and knowledge or innocence of the alien, and (3) rigorously complies with procedural protections by allowing the alien an opportunity to explain or contest the evidence, investigate the possibility of plagiarism, or consider an inaccurate translation or recording. *Mei Chai Ye v. U.S. Dep't of Justice*, 489 F.3d 517, 525, n.5, 526 (2d Cir. 2007) citing *Ming Shi Xue v.BIA*, 439 F.3d 111, 125 (2d Cir. 2006).

“Self-evident inconsistencies”: Where the Board finds an alien not credible based upon an inconsistency not mentioned in the Immigration Judge’s decision, the Board does not engage in impermissible fact-finding where the inconsistencies were based upon facts of record [in this case an Immigration Judge’s prior decision in the alien’s case]. See *Xian Tuan Ye v. DHS*, 446 F.3d 289, 295-96 (2d Cir. 2006) (distinguishing from “perceived inconsistencies”). This is probably a limited fact specific-specific case.

“[W]here an asylum seeker has given ‘dramatically different’ accounts of his alleged persecution, an immigration (“IMMIGRATION JUDGE”) may properly find him incredible ‘without soliciting from the applicant an explanation for the inconsistency.’” See *Ming Shi Xue v. BIA*, 439 F.3d 111, 114 (2d Cir. 2006), quoting *Majidi v. Gonzales*, 430 F.3d 77, 81 (2d Cir. 2005).

BUT SEE: The Court reversed an adverse credibility finding in *Bao Zhu Zhu v. Gonzales*, 460 F.3d 426 (2dCir. 2006), where the Immigration Judge and the Board found that the alien’s testimony was inconsistent with her husband’s account of events as set forth in his separate asylum application and separate immigration proceedings.

2. Minor Inconsistencies

Where an asylum applicant’s inconsistent statements are not “self-evident” and the alien is not asked to explain the inconsistencies, then such statements do not support an adverse credibility finding. See *Ming Shi Xue v. BIA*, 439 F.3d 111, 118 (2d Cir. 2006).

An adverse credibility finding can be supportable even where it is based upon collateral or ancillary matters which separately do not support an adverse credibility finding but where the cumulative effect of such inconsistencies or discrepancies is determined to be consequential by the fact-finder. *See Tu Lin v. Gonzales*, 446 F.3d 395, 402 (2d Cir. 2006), citing *Secaida-Rosales v. INS*, 331 F.3d 297, 308 (2d Cir. 2003) and *Xiao Ji Chen v. DOJ*, 434 F.3d 144, 160 (2d Cir. 2006).

“Inconsistencies of less than substantial importance for which a plausible explanation is offered cannot form the sole basis for an adverse credibility finding,” especially when the inconsistencies do not go to the heart or core of the alien’s asylum claim but rather relate to collateral or ancillary matters. *See Secaida-Rosales v. INS*, 331 F.3d 297, 308 (2d Cir. 2003).

Inconsistencies are not fatal to an alien’s credibility where any discrepancies are minor and isolated and do not relate to material facts or go to the heart of the alien’s claim. *See Diallo v. INS*, 232 F.3d 279, 288 (2d Cir. 2000), citing *Matter of A-S-*, 21 I&N Dec. 1106, 1110 (BIA 1998).

I. Lack of Specific and Detailed Testimony

A finding of testimonial vagueness cannot, without more, support an adverse credibility determination unless government counsel or the IJ first attempts to solicit more detail from the alien. *Li v. Mukasey*, 529 F.3d 141 (2d Cir. 2008), citing *Xue v. BIA*, 439 F.3d 111, 122-23 (2d Cir. 2006); *Chen v. U.S. Dep’t of Justice*, 426 F. 3d 104, 114 (2d Cir. 2005).

An IJ may fail to create a record that can support an adverse credibility finding when the IJ makes that finding based on a lack of detail without probing for incidental details and seeking to draw out inconsistencies. *Liu v. INS*, 475 F.3d 135, 138-39 (2d Cir. 2007).

An Immigration Judge’s finding that the alien was not credible because the testimony on certain relevant events lacked detail was not supported by the record [transcript] and could not itself support an adverse credibility finding; however, the Immigration Judge’s overall adverse credibility finding was supported by the record without consideration of this point. *See Qyteza v. Gonzales*, 437 F.3d 224, 227 (2d Cir. 2006).

An Immigration Judge may dismiss, for failure to meet his or her burden of proof, an alien’s testimony for lack of detail or vagueness “only if it does not ‘identify facts corresponding to each of the elements of one of the refugee categories of the immigration statutes.’” *See Cao He Lin v. United States Dept. of Justice*, 428 F.3d 391, 400 (2d Cir. 2005), quoting *Jin Shui Qiu v. Ashcroft*, 329 F.3d 140, 151 (2d Cir. 2003). *See also Xiao Ji Chen*, 471 F.3d 315 (2d 2006); *Jin Chen v. United States Dept. of Justice*, 426 F.3d 104, 114 (2d Cir. 2005) (contrasting cases in which the

Immigration Judge correctly relied upon lack of detail in testimony with those in which the Immigration Judge incorrectly found insufficient detail).

BUT SEE: *Lin v. U.S. Dept. of Justice*, 453 F.3d 99, 110 -111 (2d Cir. 2006) finding the IJ's stated finding that was the key to his adverse credibility determination was based on speculation upon speculation.

J. Omissions

An asylum applicant is not required to set forth all of his or her reasons for fearing return to his or her home country on the asylum application and omission of persecutory incidents from that application are not necessarily fatal to his or her claim. *See Pavlova v. INS*, 441 F.3d 82, 90 (2d Cir. 2006).

Tangential omission: Were overreliance on a tangential omission the sole error the IJ made in reaching his adverse credibility determination, this case would likely be akin to those cases in which we have held that, despite some errors, remand to the BIA was futile. *Lin v. U.S. Dept. of Justice*, 453 F.3d 99, 110 (2d Cir. 2006), *citing Singh v. BIA*, 438 F.3d 145, 148-50 (2d Cir.2006) (per curiam); *Qyteza v. Gonzales*, 437 F.3d 224, 227-28 (2d Cir.2006) (per curiam); *Xiao Ji Chen*, 471 F.3d 315 (2d Cir. 2006).

Minor and collateral omissions from an asylum application are insufficient to support an adverse credibility finding because “the circumstances surrounding the application process do not often lend themselves to a perfectly complete and comprehensive recitation of an applicant’s claim to asylum or withholding, and that holding applicants to such a standard is not only unrealistic but also unfair.” *See Zhi Wei Pang, v. Bureau of Citizenship and Immigration Services*, 448 F.3d 102, 112 (2d Cir. 2006) *quoting Secaida-Rosales v. INS*, 331 F.3d 297, 308 (2d Cir. 2003).

NOTE: In this coercive family planning case the Court distinguished between an omission for a claim of a “direct” persecution (harm happening to applicant) versus for a claim of “constructive” persecution (harm happening to family member of applicant who remained in China), finding that the omission was less significant for a claim of “constructive” persecution. *See Zhi Wei Pang, v. Bureau of Citizenship and Immigration Services*, 448 F.3d 102, 112 (2d Cir. 2006).

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. *See Xu Duan Dong v. Ashcroft* 406 F.3d 110, 111-12 (2d Cir. 2005) (finding alien’s omission of forced sterilization from asylum application to be a material omission rather than the omission of a collateral or not substantial detail).

In upholding an Immigration Judge's adverse credibility finding, the Board did not err by relying upon the alien's omission from his asylum application of the single persecutory event which the alien recounted in his testimony. *See Xian Tuan Ye v. DHS*, 446 F.3d 289, 295-96 (2d Cir. 2006).

K. Opportunity to Explain

BAD ACF: The IJ's factual premise was not supported by the record. IJs get into trouble and exceed their discretion when they fail to provide the respondent an opportunity to rebut the facts. *See Singh v. Mukasey*, 553 F.3d 207, 212-13 (2d Cir. 2009).

An Immigration Judge is required to explain, in light of the entire record, why the alien's testimony should be disbelieved in light of the discrepancies of record and the explanations for such inconsistencies. *See Diallo v. Gonzales*, 445 F.3d 624, 629 (2d Cir. 2006).

Where an alien is not provided an opportunity to explain, the alien is "denied an opportunity to clarify genuinely consistent testimony that an [Immigration Judge] has unwittingly misconstrued. And, conversely, [Immigration Judges] could prematurely decide that testimony is inconsistent when, in fact, the purported discrepancies readily admit of [sic] explanation which the [Immigration Judge] would find valid." *See Zhi Wei Pang, v. Bureau of Citizenship and Immigration Services*, 448 F.3d 102, 110 (2d Cir. 2006), quoting *Ming Shi Xue v. BIA*, 439 F.3d 111, 122 (2d Cir. 2006).

An asylum applicant "must do more than offer a plausible explanation for his inconsistent statements to secure relief; he must demonstrate that a reasonable factfinder would be *compelled* to credit his testimony." *See Xian Tuan Ye v. DHS*, 446 F.3d 289, 295 (2d Cir. 2006) (emphasis in original), quoting *Majidi v. Gonzales*, 430 F.3d 77, 80-81 (2d Cir. 2005). *See also Diallo v. Gonzales*, 445 F.3d 624, 629 (2d Cir. 2006) (an Immigration Judge must consider an alien's explanations for any discrepancies but is not required to refute each and every explanation provided before rendering an adverse credibility finding).

The Immigration Judge erred by failing to consider the alien's explanation for the discrepancies between his testimony and the contents of his asylum application where the alien stated that he signed a blank application and advised that the application contained errors and where the application itself did not contain a signature for the preparer of the form. *See Zhi Wei Pang, v. Bureau of Citizenship and Immigration Services*, 448 F.3d 102, 108-09 (2d Cir. 2006).

An Immigration Judge is not required to credit an alien's explanations for any discrepancies but is required to provide specific, cogent reasons for rejecting the explanations. *See Zhi Wei Pang, v. Bureau of Citizenship and Immigration Services*, 448 F.3d 102, 108 (2d Cir. 2006), citing *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004). *See also Liang Chen v. U.S. Att'y Gen.*, 454 F.3d 103, 106 (2d Cir. 2006).

1. Explanation Required

"When putative inconsistencies or implausibilities are not dramatic and the need to clarify is not obvious, an [Immigration Judge] has an obligation to inform the [alien] that his

testimony is being viewed as potentially flawed, and the [Immigration Judge] must give the [alien] a chance to explain.” See *Zhi Wei Pang, v. Bureau of Citizenship and Immigration Services*, 448 F.3d 102, 109 (2d Cir. 2006), citing *Ming Shi Xue v. BIA*, 439 F.3d 111, 125 (2d Cir. 2006).

Where an asylum applicant’s inconsistent statements are not “self-evident” and the alien is not asked to explain the inconsistencies, then such statements do not support an adverse credibility finding. See *Ming Shi Xue v. BIA*, 439 F.3d 111, 121 (2d Cir. 2006).

2. Explanation not Required

“[W]here an asylum seeker has given ‘dramatically different’ accounts of his alleged persecution, an immigration judge (“IJ”) may properly find him incredible ‘without soliciting from the applicant an explanation for the inconsistency.’” See *Ming Shi Xue v. BIA*, 439 F.3d 111, 114 (2d Cir. 2006) (noting that only dramatic, self-evident, obvious, or substantial inconsistencies do not require an explanation from the alien and it is the alien’s responsibility to proffer, with or without prompting, an explanation for what appears on its face to be a clear contradiction.”), quoting *Majidi v. Gonzales*, 430 F.3d 77, 81 (2d Cir. 2005).

Only dramatic, self-evident, obvious, or substantial inconsistencies do not require an explanation from the alien and it is the alien’s “responsibility to proffer, with or without prompting, an explanation for what appears on its face to be a clear contradiction.” See *Ming Shi Xue v. BIA*, 439 F.3d 111, 114, 120-21 (2d Cir. 2006).

Where an asylum applicant’s inconsistent statements are not “self-evident” and the alien is not asked to explain the inconsistencies, then such statements do not support an adverse credibility finding. See *Ming Shi Xue v. BIA*, 439 F.3d 111, 118 (2d Cir. 2006).

An Immigration Judge is not required, ““when faced with inconsistent testimony of an asylum applicant” to ““always bring any apparent inconsistencies to the applicant’s attention and actively solicit an explanation.”” See *Diallo v. Gonzales*, 445 F.3d 624, 629 (2d Cir. 2006), quoting *Majidi v. Gonzales*, 430 F.3d 77, 81 (2d Cir. 2005).

L. REAL ID Act

The REAL ID Act abrogated the Court’s decision in *Secaida-Rosales v. INS*, 331 F. 3d 297 (2d Cir. 2003), which did not allow adverse credibility determination to rely on ancillary or collateral omissions or inconsistencies. *Lin v. Mukasey*, 534 F. 3d 162 (2d Cir. 2008).

The Court has jurisdiction to review constitutional challenges to an Immigration Judge’s decision. See *Li Hua Lin v. U.S. Dept. of Justice*, 453 F.3d 99, 104 (2d Cir. 2006).

NOTE: The Court explicitly decided to not reach the issue of whether an Immigration Judge’s discretionary finding that alien was not credible and thus failed to meet burden of proof may constitute a due process violation. See *Li Hua Lin v. U.S. Dept. of Justice*, 453

F.3d 99, 104 (2d Cir. 2006). The Court also stated that it was not deciding whether an Immigration Judge’s “egregious disregard of applicable standards or procedures in making a credibility determination might acquire constitutional dimension.” *See Li Hua Lin v. U.S. Dept. of Justice*, 453 F.3d 99, 104 (2d Cir. 2006) (finding no “violation” in instant case).

The Court will not reverse an Immigration Judge’s decision regarding the failure of an alien to provide corroborating evidence unless the Court finds that such evidence is unavailable. *See Kyaw Zwar Tun v. United States INS*, 445 F.3d 554, 563 (2d Cir. 2006), *citing* section 101(e) of the REAL ID Act, which provision is “immediately applicable” under section 101(h)(3) of the REAL ID Act.

NOTE: The Court found that it could still remand the record to an Immigration Judge where the Immigration Judge had failed to identify what missing, relevant documentation should have been provided. *See Kyaw Zwar Tun v. United States INS*, 445 F.3d 554, 563-64 (2d Cir. 2006), *citing Jin Shui Qiu v. Ashcroft*, 329 F.3d 140, 153 (2d Cir. 2003).

In *Xiao Ji Chen v. United States Dept. of Justice*, 471 F.3d 315, *rehearing of* 434 F.3d 144 (2d Cir. 2006), the Court thoroughly analyzes the REAL ID Act and its legislative history in order to determine whether it has jurisdiction to review a finding that the alien’s asylum application was not filed within 1 year of arrival and that extraordinary or changed circumstances did not exist which excused the failure to timely file the application. The Court found that prior to the REAL ID Act, it lacked jurisdiction to review allegations of error regarding this issue and further found that while it now lacked jurisdiction over claims of questions of fact or discretionary determinations, it did have jurisdiction over constitutional claims or claims of statutory interpretation, neither of which was raised in this case regarding the finding that the asylum application was not timely filed and did not fall within the statutory exception. *See also De La Vega v. Gonzales*, 436 F.3d 141, 146 (2d Cir. 2006) (summarizing succinctly its holding in *Xiao Ji Chen*, *supra*, regarding its jurisdiction following the enactment of the REAL ID Act).

NOTE: The Court has held that it has jurisdiction, following the enactment of the REAL ID Act, to review Board or Immigration Judge decisions to grant or deny a continuance and that such decisions are reviewable under the abuse of discretion standard. *See Sanusi v. Gonzales*, 445 F.3d 193, 198 (2d Cir. 2006) (finding that Immigration Judge did not abuse his discretion in denying the alien a third continuance in order to obtain evidence to support his application for protection under the Convention Against Torture).

The Court held that although the REAL ID Act’s provisions regarding giving deference to an Immigration Judge’s adverse credibility finding which is based upon inconsistencies, inaccuracies, or falsehoods which do not go to the heart of an alien’s claim would seem to overrule precedent decisions, such as *Secaida-Rosales v. INS*, 331 F.3d 297 (2d Cir. 2003), such decisions remain good law for asylum applications filed before May 11, 2005. *See Liang Chen v. U.S. Att’y Gen.*, 454 F.3d 103, 107 n.2 (2d Cir. 2006).

M. Responsiveness to Questions

Evasiveness in answering questions is an outward manifestation of an alien's demeanor. *See Tu Lin v. Gonzales*, 446 F.3d 395, 400 (2d Cir. 2006). *See also Jian Hui Shao v. BIA*, 465 F.3d 497, 500 (2d Cir. 2006), *remanded on another ground, J-H-S-*, 24 I&N Dec. 196 (BIA 2007) (finding the alien's evasiveness indicated a desire not to be pinned down about a particular answer).

N. Cases Where the Board Rejects the IJ's Finding

The Court assumed the credibility of Aliyev's testimony, as the Board explicitly rejected the IJ's adverse credibility finding. *Aliyev v. Mukasey*, 549 F.3d 111, 117 (2d Cir. 2008). The Board recognized that the arrest and beating of Aliyev in August 1996 was a serious incident. In finding that this incident did not rise to the level of persecution, the Board acknowledged that Aliyev was beaten, but noted that there was no indication Aliyev sustained serious injuries. The Court remanded, however, because "a 'minor beating' or, for that matter, any physical degradation designed to cause pain, humiliation or other suffering, may rise to the level of persecution if it occurred in the context of an arrest or detention on the basis of a protected ground." *Aliyev v. Mukasey*, 549 F.3d 111, 117, *quoting Beskovic v. Gonzales*, 467 F.3d 223, 226 (2d Cir.2006).

The Board reversed the IJ's ACF and found that the respondent had experienced past persecution in the Republic of the Congo, but dismissed the appeal because the respondent's well-founded fear was rebutted due to changed country conditions in the Republic of the Congo. *Passi v. Mukasey*, 535 F.3d 98 (2d Cir. 2008) (the Court found that the Board did not conduct an "individualized analysis" of how changed country conditions would affect the respondent's situation.)

O. Post Shao-CPC Cases

BAD ACF: The IJ failed to address why it would be unreasonable for Lin to believe that the date on which his marriage certificate was filed with a governmental agency was the date on which he officially became married. *Xiao Kui Lin v. Mukasey*, 553 F.3d 217 (2d Cir. 2009) (the IJ overlooked a plausible explanation for Lin's confusion that was apparent in the record evidence that the IJ relied upon to conclude that no such explanation existed); *see Latifi v. Gonzales*, 430 F.3d 103, 105 (2d Cir. 2005) (rejecting IJ's adverse credibility finding where IJ failed to evaluate plausible explanations for inconsistencies); *see Tian-Yong Chen v. INS*, 359 F.3d 121, 127 (2d Cir. 2004) (noting that remand may be appropriate "where the agency's determination is based on an inaccurate perception of the record, omitting potentially significant facts"). The Court therefore could not say that a substantial basis existed for concluding that Lin would return to China without his family if he were ordered removed.

The Court explained the it was remanding the case, instead of finding a remand futile, because the construction of 8 U.S.C. § 1101(a)(42), "which rejects a categorical application of the 'well-founded fear' provision to such claims in favor of case-by-case review," earned Chevron deference in its decision in *Jian Hui Shao v. Mukasey*, 546 F.3d 138, 156-57 (2d F.3d 2008). Because this construction left open the possibility that a Chinese national with two or more children might demonstrate a well-founded fear of future persecution, *id.* at 156, a citation to *J-H-S-*, *J-W-S-*, or *S-Y-G* alone would not support a categorical rejection of Lin's application. *Xiao Kui Lin v. Mukasey*, 553 F.3d 217, 224 (2d Cir. 2009).

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

An adverse credibility finding can be supportable where no corroborating evidence was provided in cases where the Immigration Judge or the Board did not rely upon the absence of corroborating evidence in finding the alien not credible. *See Diallo v. Gonzales*, 445 F.3d 624, 633 (2d Cir. 2006).

Corroboration of an alien's claim usually consists of background information on the alien's home country as well as evidence relating to an alien's specific claim. *See Diallo v. INS*, 232 F.3d 279, 288 (2d Cir. 2000).

Corroboration of the specifics of an alien's claim may reasonably be expected only under certain circumstances, such as material facts central to an alien's claim and which are easily subject to verification and evidence which "is of the type which that would normally be created or available in the particular country and is accessible to the alien." *See Diallo v. INS*, 232 F.3d 279, 287 (2d Cir. 2000), quoting *Matter of S-M-J-*, 21 I&N Dec. 722, 726 (BIA 1997).

NOTE: The Court observed that its precedent has never held that credible testimony is automatically sufficient to meet an alien's burden of proof without the need for corroborating evidence and explicitly disagreed with the "prevailing standard" in the Ninth Circuit which allows credible testimony alone to render unnecessary the production of corroborating evidence. *See Diallo v. INS*, 232 F.3d 279, 286 (2d Cir. 2000).

Where the Board (or an Immigration Judge) requires the production of corroborating evidence, the Board must 1) render an explicit credibility finding, 2) articulate the reasons why it is reasonable to expect corroborating evidence, and 3) assess the alien's explanation for the absence of corroborating evidence. *See Diallo v. INS*, 232 F.3d 279, 287 (2d Cir. 2000).

"An applicant may be required to provide any reasonably available documentation to corroborate the elements of her claim, or explain why such documentation is unavailable, and an [Immigration Judge] may rely on the failure to do so in finding that the applicant has not met her burden of proof. *See Kyaw Zwar Tun v. United States INS*, 445 F.3d 554, 563 (2d Cir. 2006), citing *Zhou Yun Zhang v. INS*, 386 F.3d 66, 78 (2d Cir. 2004).

Where an Immigration Judge finds that an alien should have provided corroborating evidence, the Immigration Judge must "identify the particular pieces of missing, relevant documentation" and explain why the missing documentation should have been reasonably available to the alien. *See Diallo v. Gonzales*, 445 F.3d 624, 633 (2d Cir. 2006), quoting *Jin Shui Qiu v. Ashcroft*, 329 F.3d 140, 153 (2d Cir. 2003), citing *Diallo v. INS*, 232 F.3d 279, 285-90 (2d Cir. 2000).

"[I]t is inappropriate to base a credibility determinate solely on the failure to provide corroborative evidence" although the "presence or absence of corroboration may properly be considered in determining credibility." *See Diallo v. INS*, 232 F.3d 279, 287 (2d Cir. 2000), citing *Matter of S-M-J-*, 21 I&N Dec. 722, 731 (BIA 1997) (holding that "[a] failure of proof is not a proper ground *per se* for an adverse credibility determination").

It is error for an Immigration Judge to find an alien not credible because his or her testimony was not supported by the documentary evidence of record where the Immigration Judge does not identify what evidence was needed to support the alien's claim and does not explain how the evidence of record contradicted, undermined, or did not support the alien's testimony. *See You Hao Yang v. BIA*, 440 F.3d 72, 73 (2d Cir. 2006).

An Immigration Judge errs in denying an asylum applicant's claim for lack of corroborating evidence if he or she does not consider the alien's explanation for not providing the corroborating documentation at issue. *See Diallo v. INS*, 232 F.3d 279, 289 (2d Cir. 2000).

Inconsistencies are not fatal to an alien's credibility where any discrepancies are minor and isolated and do not relate to material facts or go to the heart of the alien's claim. *See Diallo v. INS*, 232 F.3d 279, 288 (2d Cir. 2000), citing *Matter of A-S-*, 21 I&N Dec. 1106, 1110 (BIA 1998).

1. If Testimony is Credible

An alien's credible testimony may still require the production of corroborating evidence where the testimony lacks detail or is inconsistent. *See Diallo v. INS*, 232 F.3d 279, 286 (2d Cir. 2000). *See also Guan Shan Liao v. United States Dept. of Justice*, 293 F.3d 61, 71-72 (2d Cir. 2002) (discussing corroborating evidence standards and quoting, with approval, the Board's decision in *Matter of S-M-J-*, 21 I&N Dec. 722, 724-25 (BIA 1997)).

"Although an applicant can in some cases satisfy his burden of proof with his own testimony, 'where the circumstances indicate that an applicant has, or with reasonable effort could gain, access to relevant corroborating evidence, his failure to produce such evidence in support of his claim is a factor that may be weighed in considering whether he has satisfied the burden of proof.'" *See Cao He Lin v. United States Dept. of Justice*, 428 F.3d 391, 401 (2d Cir. 2005), quoting *Zhou Yun Zhang v. INS*, 386 F.3d 66, 71 (2d Cir. 2004).

"[W]here the applicant has furnished credible corroborating evidence to confirm his testimony, the [Immigration Judge] may not reject his testimony because he did not furnish additional evidence." *See Cao He Lin v. United States Dept. of Justice*, 428 F.3d 391, 401 (2d Cir. 2005), citing *Secaida-Rosales v. INS*, 331 F.3d 297, 311-12 (2d Cir. 2003).

An Immigration Judge erred in basing adverse credibility finding, in part, on speculation and conjecture that the applicant's birth control certificates appeared fabricated where the DHS had not made any attempt to determine their authenticity and the alien testified sufficiently to explain the apparent discrepancies and authenticate the documents. *See Jin Chen v. United States Dept. of Justice*, 426 F.3d 104, 115 (2d Cir. 2005).

BUT SEE: In this case there is ample basis for the IJ's conclusion that the two incidents described by the respondent - disparate in time, place, nature and severity as they are - do not,

taken together, satisfy the high standards of proof necessary for withholding of removal or relief under the CAT. *Joaquin-Porras v. Gonzales*, 435 F.3d 172, 182 (2d Cir. 2006).

2. If Testimony is not Credible

An Immigration Judge should take into account evidence of record, including Department of State Country Reports, which confirm an alien's account of events. *See Poradisova v. Gonzales*, 420 F.3d 70, 79 (2d Cir. 2005), *citing Diab v. Ashcroft*, 297 F.3d 35, 40 (1st Cir. 2005) for the proposition that “Should the applicant be found not entirely credible, corroborating evidence, such as country condition reports, may be used to bolster an applicant's credibility.” (emphasis added by Second Circuit).

BUT SEE: In this case there is ample basis for the IJ's conclusion that the two incidents described by the respondent - disparate in time, place, nature and severity as they are - do not, taken together, satisfy the high standards of proof necessary for withholding of removal or relief under the CAT. *Joaquin-Porras v. Gonzales*, 435 F.3d 172, 182 (2d Cir. 2006)

B. Airport Statements

Caution is to be exercised when using an alien's airport statement to support an adverse credibility finding because aliens at airport interviews may view them as coercive or threatening and thus not be entirely forthcoming during such interviews. *See Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 396 (2d Cir. 2005), *citing Ramsameachire v. Ashcroft*, 357 F.3d 169, 179 (2d Cir. 2004).

1. Credible fear interviews: In a matter of first impression, “credible fear” interviews were found to be more similar to airport interviews than asylum interviews, and to therefore “warrant the close examination called for by *Ramsameachire*.” *Zhang v. Holder*, 585 F.3d 715, 724 (2d Cir. 2009).

An airport statement may be used to support an adverse credibility finding where the record shows that the statement “represents a sufficiently accurate record of the alien's statements to merit consideration in determining whether the alien is credible.” *See Zhang v. Holder*, 585 F.3d 715, 721-22 (2d Cir. 2009); *Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 396 (2d Cir. 2005), *citing Ramsameachire v. Ashcroft*, 357 F.3d 169, 179 (2d Cir. 2004). *See also Liang Chen v. U. S. Att'y Gen.*, 454 F.3d 103, 107-108 (2d Cir. 2006).

Factors to be considered when evaluating the reliability of an airport statement, although not required in every case, include: 1) does the statement summarize or paraphrase the alien's responses rather than present a verbatim recitation or transcript of interview; 2) are the questions asked of the alien designed to elicit information or details of an asylum claim; 3) are there any indications that the alien was reluctant to provide information, including reluctance due to events in the alien's home country; and 4) do the alien's answers on the statement suggest that he or she does not understand English or the translation provided by the interpreter. *See Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 396 (2d Cir. 2005), *citing Ramsameachire v. Ashcroft*, 357 F.3d 169, 179-80 (2d Cir. 2004).

Where the airport statement appears to have been prepared in a non-coercive manner and carefully recorded the questions and answers, it can be used to support an adverse credibility finding. *See Ramsameachire v. Ashcroft*, 357 F.3d 169, 181-82 (2d Cir. 2004).

An airport statement cannot be relied upon to support an adverse credibility finding where the record “‘reveals that [the alien’s] airport interview may not represent an accurate account of the persecutions suffered’ by the alien in his home country.” *See Ramsameachire v. Ashcroft*, 357 F.3d 169, 179 (2d Cir. 2004), *quoting Balasubramanrim v. INS*, 143 F.3d 157, 162 (3d Cir. 1998).

It is error to rely upon discrepancies between an alien’s testimony and his or her airport statements where the alien’s explanations for the discrepancies were not considered. *See Ucelo-Gomez v. Gonzales*, 464 F.3d 163, 167 (2d Cir. 2006).

An Immigration Judge must consider an alien’s allegations that he or she was under coercion at the time of the airport interview when evaluating this explanation for discrepancies between an alien’s testimony and the alien’s statements at the airport interview. *See Kanacevic v. INS*, 448 F.3d 129, 137 (2d Cir. 2006) (finding Immigration Judge’s adverse credibility finding and rejection of alien’s claim of coercion by airport officials to be supported by the record). However, a respondent’s claim to have been “nervous and distracted” during the credible fear interview does not automatically undermine or negate its reliability. *Zhang v. Holder*, 585 F.3d 715, 725 (2d Cir. 2009).

An adverse credibility finding is not supportable if rendered solely on the basis of the contents of an airport statement where the alien was largely, but not completely, forthcoming at the airport interview. *See Ramsameachire v. Ashcroft*, 357 F.3d 169, 179 (2d Cir. 2004). However, where the alien’s account of persecutory events in the airport statement is a completely different account from that testified to before an Immigration Judge, such discrepancies can support an adverse credibility finding. *See Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 398 (2d Cir. 2005).

C. Authentication of Documents

An Immigration Judge should not reject a document for lack of authenticity absent some evidence that the document is fraudulent or otherwise not authentic. *See Cao He Lin v. Dept of Justice*, 429 F.3d 279 (2d Cir. 2006).

In rendering an adverse credibility finding, an Immigration Judge may rely upon a government Embassy or forensics report finding that an identity document (birth certificate) is fraudulent and that the rebuttal evidence did not overcome that finding where the rebuttal documentation had not been authenticated as required by regulation. *See Borovikova v. United States Dept. of Justice*, 435 F.3d 151, 157 (2d Cir. 2006).

“Since questions concerning the authenticity of documents may be vital to an [Immigration Judge’s] decision whether an asylum applicant is recalling true events or struggling to parrot a script, the testimony at issue – concerning when [the alien] received a medical document [to corroborate claim

of past persecution] and how it reached the United States – is material to her claim.” See *Borovikova v. United States Dept. of Justice*, 435 F.3d 151, 160 (2d Cir. 2006).

D. Department of State Country Reports

In the absence of contradictory evidence, State Department country condition reports are afforded considerable deference. *Hoxhallari v. Gonzales*, 468 F.3d 179, 186 (2d Cir. 2006) citing *Matter of T-M-B-*, 21 I&N Dec. 775, 779 (BIA 1997). Also, deference is owed to the specialized knowledge of an IJ acting in his agency capacity. *Hoxhallari v. Gonzales*, 468 F.3d 179, 186 (2d Cir. 2006).

Distinguishing *Hoxhallari v. Gonzales*, 468 F.3d 179, 186 (2d Cir. 2006), the Court found that the IJ’s cursory treatment of the respondent’s well-founded fear claim was inadequate because the Republic of the Congo had not been a source of a large number of asylum claims that would warrant a finding that the BIA/IJ was familiar with that country’s recent history. The Board improperly based its finding on a country report that detailed general improvements in the Republic of the Congo, while also indicating that the respondent’s hometown (which the agency was required by regulation to presume was unreasonable for him to leave) is still troubled by ethnic and political conflict. *Passi v. Mukasey*, 535 F.3d 98 (2d Cir. 2008). The Court remanded for the agency to conduct an “individualized analysis” of whether the changes in conditions in the Congo were so fundamental that they were sufficient to rebut the presumption that the respondent’s fear of persecution was well founded. *Passi v. Mukasey*, 535 F.3d 98 (2d Cir. 2008).

The concurring judge in *Passi* emphasized that this is a rare fact pattern, and warned against overreading the limited holding in *Tambadou v. Gonzales*, 446 F.3d 298 (2d Cir. 2006).

The Board identified no indisputable historical event compelling a finding that the respondent will no longer face persecution should he return to his native country. *Alibasic v. Mukasey* 547 F.3d 78, 79-88 (2d Cir. 2008) (considering the same Country report as the IJ, the Board reached a dramatically different assessment than the IJ regarding country conditions in Serbia and Montenegro).

The Board did not support its decision with substantial evidence in the record, especially because it did not address the evidence of continued persecution of Serbian minorities identified by the IJ in supporting materials submitted by the respondent and the 2004 Country report. See *Passi*, 535 F.3d at 102 (finding that BIA improperly failed to consider information favorable to the respondent in the country report as well as several news articles submitted by the respondent. The BIA also failed to conduct an “individualized analysis” of whether the changes in conditions in the respondent’s homeland were so fundamental that they are sufficient to rebut the presumption that the respondent’s fear of persecution is well founded. *Passi*, 103-04; *Tambadou*, 446 F.3d at 304 (BIA improperly did not engage in an

individualized analysis beyond its general conclusions based on its over-simplified reading of the country report.)

The IJ erred in finding that the State Department Country Reports concerning Guinea contradicted the applicant's testimony. *Diallo v. U.S. Dep't of Justice*, 548 F.3d 232 (2d Cir. 2008).

Consular reports have been found to be inherently unreliable where (i) the identity and qualifications of the investigator(s); (ii) the objective and extent of the investigation; and (iii) the methods used to verify the information were not provided. *Lin v. U.S. Dep't of Justice*, 459 F.3d 255, 271 (2d Cir. 2006).

An Immigration Judge should not place excessive reliance upon the Department of State Country Reports. *See Tambadou v. Gonzales*, 446 F.3d 298, 302 (2d Cir. 2006), *citing Tian-Yong Chen v. INS*, 359 F.3d 121, 130 (2d Cir. 2004).

Evidence from a Department of State Country Report are not binding on an Immigration Judge and cannot be used to automatically discredit contrary evidence presented by an alien. *See Tian-Yong Chen v. INS*, 359 F.3d 121, 130 (2d Cir. 2004).

State Department Country Reports are probative evidence, although not binding and insufficient to discredit contrary evidence, and are properly used to determine if an alien's claim is plausible. *See Tu Lin v. Gonzales*, 446 F.3d 395, 400-01 (2d Cir. 2006) (finding Country Report statements that abortion certificates are only issued for voluntary abortions to support an Immigration Judge's finding that the alien was not credible where the alien presented an abortion certificate to support his claim that his wife had a forced abortion).

In finding that the alien had failed to meet his burden of proof, the Board erred in relying upon "selectively extracted" portions of the Department of State's Country Report. *See Tambadou v. Gonzales*, 446 F.3d 298, 302 (2d Cir. 2006).

An Immigration Judge is obligated to consider, in addition to the information contained in a Department of State Country Report, "any contrary or countervailing evidence with which [he or she] is presented, as well as the particular circumstances of the applicant's cases demonstrated by testimony and other evidence." *See Tian-Yong Chen v. INS*, 359 F.3d 121, 130 (2d Cir. 2004). *See also See Tambadou v. Gonzales*, 446 F.3d 298, 302 (2d Cir. 2006) (finding Board erred in relying on conclusory information in the Country Report, ignoring contradictory information provided by the alien and supporting information in the Country Report, and failing to make the required individualized analysis of the alien's claim).

NOTE: The Court also noted that the Immigration Judge cannot assume that the Department of State Country Reports present “the most accurate picture of human rights in the country at issue” since it was prepared by an Executive Branch department and thus, “are sometimes skewed toward the governing administration’s foreign-policy goals and concerns.” *See Tian-Yong Chen v. INS*, 359 F.3d 121, 130 (2d Cir. 2004).

The Board erred in describing as “current conditions” the situation in the country at issue when it evaluated the 1996 Department of State Country Report in the record when rendering a decision in 2002. *See Tambadou v. Gonzales*, 446 F.3d 298, 302 (2d Cir. 2006) (noting that the Court had set down the requirements for use of Country Reports in an asylum analysis in *Tian-Yong Chen v. INS*, 359 F.3d 121, 130 (2d Cir. 2004) and explicitly stating that the Board had not followed that reasoning).

The Board errs in concluding, without a “reasoned analysis” that the Department of State Country Report supports the denial of an alien’s asylum claim without discussing the alien’s arguments and the documentary evidence which supports the testimony. *See Yan Chen v. Gonzales*, 417 F.3d 268, 272 (2d Cir. 2005) (discussing in depth this error by Immigration Judges and the Board).

It is error to find that the alien did not meet his or her burden of proof where the Department of State Country Reports provide information supporting the alien’s claim. *See Serafimovich v. Ashcroft*, 456 F.3d 81, 86 (2d Cir. 2006) (finding that the Board and the Immigration Judge erred in determining that because the alien had not been persecuted prior to her arrival in the United States that she did not have a well-founded fear at time of hearing where the Country Reports showed that conditions in Belarus had worsened since her departure).

E. False Documents, including False Statements

“There is a ‘gaping hole’ between a finding that a document submitted by an applicant is not authentic, and a holding that the witness's testimony is invented.” *Niang v. Mukasey*, 511 F.3d 138, 146 (2d Cir. 2007) citing *Kourski v. Ashcroft*, 355 F. 3d 1038, 1039 (7th Cir. 2004).

While an Immigration Judge, “in some circumstances,” may be justified in finding that the use of a false document, which goes to the heart of an alien’s asylum claim, undermines the alien’s testimony and renders the other documents of evidence questionable, it is error to find that the use of a false document automatically calls into question the veracity of the other documents provided by the alien. *See Rui Ying Lin v. Gonzales*, 445 F.3d 127, 133 (2d Cir. 2006). *See also Siewe v.*

Gonzales, 480 F.3d 160, 170-71 (2d Cir. 2007) (noting 5 categories of limitations to the invocation of *falsus in uno*).

False evidence attributable to the alien may infect his uncorroborated evidence and an IJ may properly rely on that false document to find that the alien is not credible but an alien's submission of documentary evidence that he does not know and has no reason to know is inauthentic, is no basis for *falsus in uno*. See *Siewe v. Gonzales*, 480 F.3d 160, 170 -71 (2d Cir. 2007).

NOTE: The seminal case on use of false documents and the role of such documents in assessing an alien's credibility is *Rui Ying Lin v. Gonzales*, 445 F.3d 127, 133 (2d Cir. 2006). The Court discusses the issue in depth and also addresses the *falsus in uno, falsus in omnibus* approach to credibility analysis (which it disfavors).

“The circumstances surrounding the creation and use of some false documents, and those documents' relationship to an asylum proceeding, do very little to undermine the authenticity of other documents.” See *Rui Ying Lin v. Gonzales*, 445 F.3d 127, 133 (2d Cir. 2006) (noting that an alien who obtains false documents in order to escape persecution does not have a higher burden of persuasion regarding his or her credibility).

It is “unreasonable to penalize an applicant for lying to escape persecution itself. A false document used to negate a condition precedent for persecution is fully consistent with a claim for asylum. In fact, it supports such a claim.” See *Rui Ying Lin v. Gonzales*, 445 F.3d 127, 134 (2d Cir. 2006) (noting that where an alien lies to a government about his or her identity or whether he or she has been sterilized, “if believed, is powerful proof that the [alien] fears the consequences of the truth.”).

An Immigration Judge errs in disregarding supporting [false] documentation and requiring further corroborating evidence after having credited an alien's testimony regarding the use of the false documents obtained to evade persecution. See *Rui Ying Lin v. Gonzales*, 445 F.3d 127, 134 (2d Cir. 2006).

In rendering an adverse credibility finding, an Immigration Judge may rely upon a government Embassy or forensics report finding that an identity document (birth certificate) is fraudulent and that the rebuttal evidence did not overcome that finding where the rebuttal documentation had not been authenticated as required by regulation. See *Borovikova v. United States Dept. of Justice*, 435 F.3d 151, 157 (2d Cir. 2006). “Though often helpful, an expert report will not be necessary in every case to support a finding that a document is fraudulent. An IJ is fully entitled to make findings concerning the authenticity of submitted evidence, based on her own examination and her professional analysis. Such findings will ordinarily merit deference,” unless based on “unjustified assumptions” and “unsupported speculation.” *Niang v. Mukasey*, 511 F.3d 138, 146 (2d Cir. 2007).

F. New Evidence on Appeal

While the Board may take administrative notice of potentially dispositive facts, it must also, give the alien an opportunity to rebut the significance of those facts before issuing a decision on a motion to reopen or reconsider. *Chhetry v. U.S. Dep't of Justice*, 490 F.3d 196 (2d Cir. 2007) (alien found credible in underlying proceedings). See *Jian Hui Shao v. Mukasey*, 546 F.3d 138 (2d F.3d 2008).

Where an asylum applicant provides new evidence on appeal with a request to give such evidence “proper consideration” but does not specifically request a remand and did not submit the new evidence with a motion to remand, the Board did not err by not remanding the record to the Immigration Judge for further factfinding. See *Xian Tuan Ye v. DHS*, 446 F.3d 289, 296 (2d Cir. 2006).

THIRD CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

When an IJ denies an asylum claim based in part on an adverse credibility determination, that determination is reviewed to ensure that it was appropriately based on inconsistent statements, contradictory evidence, and inherently improbable testimony in view of the background evidence on country conditions. *See Mudric v. Att’y Gen.*, 469 F.3d 94, 101 (3d Cir. 2006) *quoting Dia v. Ashcroft*, 353 F.3d 228, 249 (3d Cir. 2003), which quoted *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997).

An adverse credibility finding may be based upon the implausibility or inherent improbability of an alien’s claim. *See Berishaj v. Ashcroft*, 378 F.3d 314, 324 (3d Cir. 2004).

An adverse credibility finding must be supported by specific, cogent reasons for which the alien has not provided a reasonable explanation. *See Xin Jie Xie v. Ashcroft*, 359 F.3d 239, 243 (3d Cir. 2004), *citing Matter of A-S-*, 21 I&N Dec. 1106, 1109 (BIA 1998).

A credibility finding must be independent of an evaluation of the sufficiency of evidence because a failure to meet one’s burden of proof is not the proper basis for an adverse credibility finding. *See Xia Yue Chen v. Gonzales*, 434 F.3d 212, 217-18 (3d Cir. 2005), *citing Abdulai v. Ashcroft*, 239 F.3d 542, 551 n. 6 (3d Cir. 2001). For additional cases failing to properly meet this distinction, *see Kayembe v. Ashcroft*, 334 F.3d 231, 235 (3d Cir. 2003); *Miah v. Ashcroft*, 346 F.3d 434 (3d Cir. 2003).

Where the Board agrees with an Immigration Judge’s adverse credibility finding through a “sketchy” and short credibility analysis, the Court will review both the Immigration Judge’s and the Board’s adverse credibility finding. *See Fiadjoe v. U.S. Att’y Gen.*, 411 F.3d 135, 152-153 (3d Cir. 2005).

NOTE: The Court found that the INS “consideration for Asylum Officers Adjudicating Asylum Claims from Women” Guidelines were as applicable to Immigration Judges as to asylum officers when rendering credibility determinations. *See Fiadjoe v. U.S. Att’y Gen.*, 411 F.3d 135, 154 (3d Cir. 2005).

The Board erred in not considering the alien's explanation for her failure to tell a (male) asylum officer that she had been repeatedly raped by her father. *See Fiadjoe v. U.S. Att'y Gen.*, 411 F.3d 135, 160 (3d Cir. 2005).

An Immigration Judge errs by not allowing an alien to fully testify in support of his or her asylum claim. *See Muhanna v. Gonzales*, 399 F.3d 582, 588 (3d Cir. 2005) (finding Immigration Judge erred by cutting off alien's testimony, because Immigration Judge did not believe alien's testimony, where alien had testified about only one of the many incidents listed on the alien's asylum application).

B. Asylum Application

NO CASES LISTED

C. Asylum Officer Interview

An interview with an asylum officer may have the same or similar contextual or content flaws as an airport statement and thus may not support an adverse credibility finding. *See Korytnyuk v. Ashcroft*, 396 F.3d 272, 290 (3d Cir. 2005).

D. Conjecture and Speculation

An Immigration Judge's speculation and conjecture, rather than the evidence of record, will not support an adverse credibility finding. *See Gabuniya v. U.S. Att'y Gen.*, 463 F.3d 316 (3d Cir. 2006), *citing Chen Yun Gao v. Ashcroft*, 299 F.3d 266, 272 (3d Cir. 2002).

An adverse credibility finding based on inferences or presumptions which are not "reasonably grounded" in the record is not supportable. *See Gabuniya v. U.S. Att'y Gen.*, 463 F.3d 316 (3d Cir. 2006) *quoting Dia v. Ashcroft*, 353 F.3d 228, 249 (3d Cir. 2003) (en banc). *See also Caushi v. U.S. Att'y Gen.*, 436 F.3d 220, 226 (3d Cir. 2006).

An Immigration Judge's adverse credibility finding must "flow in a reasoned way from the evidence of record and cannot be arbitrary and conjectural in nature." *See Gabuniya v. U.S. Att'y Gen.*, 463 F.3d 316 (3d Cir. 2006), *quoting Caushi v. U.S. Att'y Gen.*, 436 F.3d 220, 226 (3d Cir. 2006), *itself quoting Dia v. Ashcroft*, 353 F.3d 228, 250 (3d Cir. 2003) (en banc).

An Immigration Judge errs by finding an witness (or alien) not credible based upon his or her conjecture that the witness's testimony reflected a selective memory where detailed testimony was provided to some questions but not to other questions where the Immigration Judge does not identify

examples of such actions by the witness. *See Caushi v. U.S. Att’y Gen.*, 436 F.3d 220, 227 (3d Cir. 2006).

An Immigration Judge’s adverse credibility finding will not be upheld where it is based upon speculation and conjecture. *See Sukwanputra v. Gonzales*, 434 F.3d 627, 636-37 (3d Cir. 2006) (finding Immigration Judge erred in concluding alien not credible due to the distances he had to have traveled to be at the three central events comprising the asylum claim where the record contained no evidence regarding the distance between the events recounted). *See also Yun Jun Cao v. U.S. Att’y Gen.*, 407 F.3d 146, 148, 154-56 (3d Cir. 2005).

E. Credibility v. Plausibility

Where an Immigration Judge states that there are no problems with an alien’s demeanor or actions which would suggest that the alien was fabricating the claim or was not truthful, the resulting adverse credibility finding had to have been based solely on the plausibility of the alien’s asylum claim. *See Jishiashvili v. U.S. Att’y Gen.*, 402 F.3d 386, 393 (3d Cir. 2005).

An Immigration Judge’s adverse credibility finding, if premised upon the plausibility of an alien’s claim, must be “properly grounded” in the record and based upon conditions in the alien’s home country. *See Jishiashvili v. U.S. Att’y Gen.*, 402 F.3d 386, 393 (3d Cir. 2005). *See generally, Qun Wang v. U.S. Att’y Gen.*, 423 F.3d 260 (3d Cir. 2005) (finding Immigration Judge’s adverse credibility finding not supported by the record).

F. Demeanor

Material discrepancies and an adverse credibility finding were buttressed by the Immigration Judge’s finding that the alien stuttered and was unable to provide a rationale explanation for an inconsistency. The court, quoting *Dia v. Ashcroft*, 353 F.3d 228, 249-50 (3d Cir. 2003), noted that an Immigration Judge is “uniquely qualified to decide whether an alien’s testimony has about it the ring of truth.” *See Lin v. U.S. Att’y Gen.*, 543 F.3d 114, 128 (3d Cir. 2008).

G. Embellishment

An Immigration Judge’s adverse credibility finding, based upon a determination that an alien’s exaggerated, embellished asylum claim is not believable, will be upheld where it is supported by the record. *See Reynoso-Lopez v. Ashcroft*, 369 F.3d 275, 278-79 (3d Cir. 2004).

H. Inconsistent Statements

Where the Board decision appears to reference with approval an Immigration Judge's adverse credibility finding based upon an alien's inconsistencies, but only analyzed a few of those discrepancies, the Court can review the inconsistencies and discrepancies identified in both the Board's and the Immigration Judge's decision. *See Xin Jie Xie v. Ashcroft*, 359 F.3d 239, 244 (3d Cir. 2004).

1. Substantial Inconsistencies

Discrepancies between an alien's testimony and affidavit concerning whether he was told that he was arrested for practicing Falun Gong or not provided a reason, and whether he practiced secretly or in public, went to the heart of his claim - - that he was arrested for practicing Falun Gong. The court also discussed how the alien's attempts to explain the contradiction further supported the adverse credibility finding in that the alien seemed to be testifying not from independent recollection, but from his recollection of what he had written earlier. *See Lin v. U.S. Att'y Gen.*, 543 F.3d 114, 127 (3d Cir. 2008).

An IJ's adverse credibility finding based, in part, on inconsistent testimony, will not be supported where the record establishes that the alien was prejudiced (*i.e.*, that there would have been a reasonable likelihood of achieving a favorable outcome) by counsel's conduct. *See Fadiga v. Att'y Gen.*, 488 F.3d 142 (3d Cir. 2007).

An alien's inconsistencies must go to the heart of his or her asylum claim in order to support an adverse credibility finding. *See Chen Yun Gao v. Ashcroft*, 299 F.3d 266, 272 (3d Cir. 2002).

2. Minor Inconsistencies

Discrepancies over dates were found not to go to the heart of an alien's claim, which was based on her capture, mistreatment and detention by rebels. *See Kaita v. U.S. Att'y Gen.*, 522 F.3d 288, 297 (3d Cir. 2008).

Minor inconsistencies cannot support an adverse credibility finding. *See Xin Jie Xie v. Ashcroft*, 359 F.3d 239, 243 (3d Cir. 2004). *See also Gabuniya v. U.S. Att'y Gen.*, 463 F.3d 316 (3d Cir. 2006) (discussing inconsistencies in dates regarding death of alien's wife, alien's self-correction of misstatement in date of his third arrest, and differences in translation of Georgian word "arm" into English and finding these minor and insufficient to support an adverse credibility finding).

“[M]inor inconsistencies and minor admissions that reveal nothing about an asylum applicant's fear for his safety are not an adequate basis for an adverse credibility finding.

[Rather,] [t]he discrepancies must involve the heart of the asylum claim.” See *Caushi v. U.S. Att’y Gen.*, 436 F.3d 220, 229 (3d Cir. 2006), quoting *Berishaj v. Ashcroft*, 378 F.3d 314, 423 (3d Cir. 2004). See also *Gabuniya v. U.S. Att’y Gen.*, 463 F.3d 316 (3d Cir. 2006) (stating that minor or irrelevant inconsistencies, plus a minor misunderstanding regarding the translation of testimony, do not support an adverse credibility finding).

NOTE: The Court in *Berishaj* was extremely displeased with the Board’s and the Immigration Judge’s decision in finding the Immigration Judge’s adverse credibility finding not to be “reasonably sound” and the Board’s decision based upon an outdated record. This is a good case for understanding what the Court wants, and does not want to see in an immigration decision.

I. Lack of Specific and Detailed Testimony

An Immigration Judge’s finding that the respondent was unable to sufficiently describe a head injury was rejected where the respondent explained how he was injured; how many cuts he suffered; described the cuts as “serious,” “deep,” and “open;” reasonably failed to understand several of the IJ’s additional questions; and where the IJ examined the respondent’s head and acknowledged his scars. *Issiakou v. Att’y Gen.*, 569 F.3d 135, 139-40 (3d Cir. 2009).

J. Omissions

Omission in an asylum application of CPC cadres’ harassment, threats of forced sterilization, and arrest supported an adverse credibility finding as the Board found that the omission itself could form the basis of an asylum application. See *Zheng v. U.S. Att’y Gen.*, No. 07-2135, 2009 WL 398257 (3d Cir. Feb. 19, 2009) (Immigration Judge also found the alien to be “incoherent” on cross-examination, and alien failed to mention that a second IUD had been forcibly inserted into his wife).

An omission of a key event can support an adverse credibility finding. See *Xin Jie Xie v. Ashcroft*, 359 F.3d 239, 243 (3d Cir. 2004) (finding omission of wife’s forced sterilization from asylum application supported adverse credibility determination where the alien had put down on his application the birth control officials request for him to be forcibly sterilized thus showing that alien was aware of importance of the relevance of such information).

K. Opportunity to Explain

1. Explanation Required

NO CASES LISTED

2. Explanation not Required

NO CASES LISTED

L. REAL ID Act

Judicial review of an Immigration Judge's decision regarding corroborating evidence must comply with section 241(b)(4)(D) of the Act as added by the REAL ID Act since that provision is applicable to all cases where a removal order is or was issued prior to the (May 11, 2005) enactment date of the REAL ID Act. *See Xia Yue Chen v. Gonzales*, 434 F.3d 212, 218 (3d Cir. 2005).

Factual determinations and discretionary decision remain outside of the jurisdiction of the Court following the enactment of the REAL ID Act. *See Sukwanputra v. Gonzales*, 434 F.3d 627, 633-34 (3d Cir. 2006).

The Court's jurisdiction under the REAL ID Act includes review of the Board's application of law to the facts of an alien's case. *See Toussaint v. Gonzales*, 455 F.3d 409, 412 n. 3 (3d Cir. 2006); *(Bhupinder) Singh v. Gonzales*, 432 F.3d 533, 541 (3d Cir. 2006).

The enactment of the REAL ID Act divested the Court of jurisdiction to determine whether an alien established that extraordinary or changed circumstances excused the untimely filing of the alien's asylum application. *See Sukwanputra v. Gonzales*, 434 F.3d 627, 635 (3d Cir. 2006) (finding that it did not need to reach the issue of whether the Immigration Judge should have given the alien the benefit of the doubt, as claimed by the alien, when determining whether extraordinary or changed circumstances excused the untimely filing of the alien's asylum application since, among other reasons, the Immigration Judge found the alien's claim incredible and implausible).

In REAL ID Act case, the Immigration Judge made no credibility determination, and Board assumed alien was credible, but denied the claim based on lack of nexus. This decision contains a good discussion of "one central reason" language, and disagrees with *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007), to the extent it imposed a "dominance test" and required that a "central reason" not be "subordinate" to other reasons. *See Ndayshimiye v. U.S. U.S. Att'y Gen.*, 557 F.3d 124 (3d Cir. 2009).

M. Responsiveness to Questions

It is error to find a witness (or an alien) not credible due to non-responsiveness to questions where the record contains few instances of such non-responsiveness. *See Caushi v. U.S. Att'y Gen.*, 436 F.3d 220, 227-28 (3d Cir. 2006).

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

Because the Act is silent as to when it is reasonable to expect an asylum applicant to submit corroborating evidence, “an otherwise-credible applicant who neither produces such corroboration nor adequately explains his or her failure to do so may be deemed to have failed to meet his or her burden of proof.” See *Abdulai v. Ashcroft*, 239 F.3d 542, 552 (3d Cir. 2001) (upholding the corroboration rule set forth by the Board in *Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997)).

Credible testimony is not per se sufficient to meet an alien’s burden of proof, without the need for corroborating evidence, but is likewise not per se insufficient as the issue of the sufficiency of the testimony alone depends upon the facts and circumstances of each case. See *Abdulai v. Ashcroft*, 239 F.3d 542, 552 (3d Cir. 2001).

Before concluding that the respondent failed to meet his burden of proof for lack of corroboration, “the IJ must conduct the following three-part ‘*Abdulai*’ inquiry: (1) identify the testimony for which it is reasonable to expect the applicant to produce corroboration; (2) examine whether the applicant corroborated that testimony; and (3) analyze whether the applicant has adequately explained any failure to provide corroboration.” *Sandie v. Att’y Gen.*, 562 F.3d 246, 253 (3d Cir. 2009) (citing *Chukwu v. Att’y Gen.*, 484 F.3d 185, 192 (3d Cir. 2007); *Abdulai v. Ashcroft*, 239 F.3d 542, 554 (3d Cir. 2001)).

Where the need for corroborating evidence is found, the Immigration Judge must explain what specific documentation was missing yet relevant, why such documentation would be reasonably available to the alien, and how that evidence conforms to the actual conditions in the alien’s home country. See *Mulanga v. Ashcroft*, 349 F.3d 123, 134 (3d Cir. 2003), citing *Jin Shui Qiu v. Ashcroft*, 329 F.3d 140, 153-54 (2d Cir. 2003) for approval of that Court’s standards and rationale.

Where, prior to the final merits hearing, an Immigration Judge’s discusses with the asylum applicant’s counsel what types of corroborating evidence should be provided, it is error for the Immigration Judge at the final hearing to deny the asylum claim based upon a failure to present corroborating evidence that was not included in the prior discussion. See *Mulanga v. Ashcroft*, 349 F.3d 123, 135-36 (3d Cir. 2003).

The Board erred when, after rejecting an Immigration Judge’s adverse credibility finding, it adopted the Immigration Judge’s corroborating evidence analysis where that analysis was based upon the adverse credibility finding. See *Miah v. Ashcroft*, 346 F.3d 434, 440 (3d Cir. 2003) (finding that the Board should have conducted an independent corroborating evidence analysis).

An Immigration Judge errs by excluding corroborating evidence without explanation. See *Xiu Ling Zhang v. Gonzales*, 405 F.3d 150, 155-56 (3d Cir. 2005) (noting that the Immigration Judge might have excluded document because it was not authenticated).

1. If Testimony is Credible

If credible, the alien's testimony may be sufficient to sustain the burden of proof for protection under the CAT without corroboration. *Ghebrehiwot v. U.S. Att'y Gen.*, 467 F.3d 344, 352 (3d Cir. 2006), *citing Mansour v. INS*, 230 F.3d 902, 907 (7th Cir. 2000) (which criticized and adverse credibility finding "washing over" a CAT claim).

Corroborating evidence may be required even where an alien has presented credible testimony. *See He Chun Chen v. Ashcroft*, 376 F.3d 215, 225 (3d Cir. 2004), *citing Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997), for factors to be considered when requiring corroborating evidence. *See also Xia Yue Chen v. Gonzales*, 434 F.3d 212, 217-18 (3d Cir. 2005) (stating that an alien may be required to produce corroborating evidence where such evidence would be reasonably expected and no satisfactory explanation for its absence has been provided).

Where the Board vacates an Immigration Judge's adverse credibility finding, the Board is not required to then undertake an independent corroborating evidence analysis, if corroborative evidence is not an issue. *See Vente v. Gonzales*, 415 F.3d 296, 301 (3d Cir. 2005).

2. If Testimony is **not** Credible

An IJ's adverse credibility finding based, in part, on discounted documentary evidence, will not be supported where the record establishes that the alien was prejudiced (*i.e.*, that there would have been a reasonable likelihood of achieving a favorable outcome) by counsel's conduct. *See Fadiga v. Att'y Gen.*, 488 F.3d 142 (3d Cir. June 15, 2007).

B. Airport Statements

An Immigration Judge or the Board can rely upon an alien's airport statement where such statement is an accurate account of an alien's claim of persecution. *See Balasubramanrim v. INS*, 143 F.3d 157, 162-64 (3d Cir. 1998).

Airport statements which require the use of an interpreter and which contain ambiguous or broadly worded language are entitled to less weight where such statements do not reflect that the immigration officers made further inquiries of the alien to get a more accurate version of the alien's claim. *Balasubramanrim v. INS*, 143 F.3d 157, 162-64 (3d Cir. 1998). *See also Yan Lan Wu v. Ashcroft*, 393 F.3d 418, 424-25 (3d Cir. 2005).

An airport interview statement will be discounted if it does not contain an adequate foundation or important information regarding the manner in which it was conducted and prepared. *See Korytnyuk v. Ashcroft*, 396 F.3d 272, 288 (3d Cir. 2005), *citing Dia v. Ashcroft*, 353 F.3d 228, 257 (3d Cir. 2003). *See also He Chun Chen v. Ashcroft*, 376 F.3d 215, 223-24 (3d Cir. 2004); *Mulanga v. Ashcroft*, 349 F.3d 123, 137 (3d Cir. 2003); *Ezeagwuna v. Ashcroft*, 325 F.3d 396, 408 (3d Cir. 2003); *Senathirajah v. INS*, 157 F.3d 210, 217-18 (3d Cir. 1998).

An airport interview may not be adequate for adverse credibility purposes where “[w]e do not know how the interview was conducted or how the document was prepared. We do not know whether the questions and answers were recorded verbatim, summarized, or paraphrased. we cannot tell from the document the extent to which [the alien] had difficulty comprehending the questions, whether questions had to be repeated, or when and how sign language was used. Nor does the document reveal whether [the alien’s] response actually correspond to those recorded or whether the examiner recorded some distilled or summary version based on his best estimation of the response.” *See Dia v. Ashcroft*, 353 F.3d 228, 257 (3d Cir. 2003), quoting *Balasubramanrim v. INS*, 143 F.3d 157, 162 (3d Cir. 1998). *See also Sensthirajah v. INS*, 157 F.3d 210, 217-18 (3d Cir. 1998) (discussing at length its prior holding in *Balasubramanrim v. INS*, 143 F.3d 157 (3d Cir. 1998).

Inconsistencies between an alien’s testimony before an Immigration Judge and statements on an airport interview statement are not sufficient, on their own, to find the alien not credible. *See Fiadjoe v. U.S. Att’y Gen.*, 411 F.3d 135, 159 (3d Cir. 2005); *Balasubramanrim v. INS*, 143 F.3d 157, 164 (3d Cir. 1998).

An alien’s airport statement cannot alone support an adverse credibility finding where such statements conflict with an alien’s testimony because the “interview is likely to be hurried; language difficulties arise; the results may be inaccurately recorded; and an arriving alien who has suffered abuse in his home country may be reluctant to reveal full information in his or her first meeting with the government.” *See Fiadjoe v. U.S. Att’y Gen.*, 411 F.3d 135, 159 (3d Cir. 2005).

Too great a reliance on an alien’s airport statement over more detailed recitation of events in an asylum application or in testimony at an asylum hearing undermine the reliability of the administrative process. *See Fiadjoe v. U.S. Att’y Gen.*, 411 F.3d 135, 159 (3d Cir. 2005), citing *Senathirajah v. INS*, 157 F.3d 210, 218 (3d Cir. 1998).

Where the inconsistencies or discrepancies between an alien’s testimony and his or her statements at an airport interview go to the heart of the alien’s asylum claim, such inconsistencies will support an adverse credibility finding. *See He Chun Chen v. Ashcroft*, 376 F.3d 215, 224 (3d Cir. 2004) (alien’s based his claim on Falun Gong during the airport interview, without mentioning CPC, whereas his claim before the Immigration Judge was based on CPC). *See also Xin Jie Xie v. Ashcroft*, 359 F.3d 239, 246 (3d Cir. 2004).

Immaterial discrepancies between an alien’s statements at an airport interview and the alien’s testimony before an Immigration Judge do not support an adverse credibility finding. *See Mulanga v. Ashcroft*, 349 F.3d 123, 137 (3d Cir. 2003).

C. Authentication of Documents

The Board’s rejection of a notice from an applicant’s village committee in China (purportedly obtained by the applicant’s mother and indicating that the applicant would face sterilization upon return) for lack of authentication was found proper where the document had been unauthenticated

by any means of all, including an affidavit from the applicant's mother as to how the document was obtained. *Chen v. Att'y Gen. Of US*, — F.3d—, 2011 WL 923353 (3d Cir. 2011).

The Board erred in relying upon a Consular letter in which the writer stated that the documents provided by the asylum applicant were fraudulent where the writer was not part of the investigatory team or involved in the investigation. *See Ezeagwuna v. Ashcroft*, 325 F.3d 396, 405-08 (3d Cir. 2003) (discussing at length the weaknesses of the consular letter).

It is error to discredit an alien's testimony due to the presentation of unauthenticated documents where the alien provides a reasonable explanation for the failure to authenticate the documents. *See Leia v. Ashcroft*, 393 F.3d 427, 433-34 (3d Cir. 2005) (finding witness testimony as to difficulties in authenticating documents in Ukraine bolstered alien's explanation and noting that authentication method set forth in 8 C.F.R. § 1287.6 is not the only means of authenticating documents).

The record will be remanded where an Immigration Judge's erroneously determines that the authentication requirements of 8 C.F.R. § 1287.6 were an absolute and such determination significantly impacts the Immigration Judge's adverse credibility finding. *See Gui Cun Liu v. Ashcroft*, 372 F.3d 529, 532 (3d Cir. 2004) (finding that the authentication requirements of 8 C.F.R. § 1287.6 was not the only means of authenticating an abortion certificate). *See also Xiu Ling Zhang v. Gonzales*, 405 F.3d 150, 155-56 (3d Cir. 2005) (discussing the Court's interpretation of the authentication requirements at 8 C.F.R. § 1287.6); *Leia v. Ashcroft*, 393 F.3d 427, 434-35 (3d Cir. 2005) (remanding a case involving authentication of documents under 8 C.F.R. § 1287.6); *Gui Cun Liu v. Ashcroft*, 372 F.3d 529, 533-34 (3d Cir. 2004) (setting standard for authentication of documents under 8 C.F.R. § 1287.6).

D. Department of State Country Reports

Department of State Country Reports are “the most appropriate and perhaps the best resource for information on political situations in foreign nations.” *See McAllister v. U.S. Att'y Gen.*, 444 F.3d 178, 189 (3d Cir. 2006); *Xin Jie Xie v. Ashcroft*, 359 F.3d 239, 243 (3d Cir. 2004), *quoting Zubeda v. Ashcroft*, 333 F.3d 463, 477-78 (3d Cir. 2003).

NOTE: The Court in *Toussaint v. U.S. Att'y Gen.*, 455 F.3d 409, 416-17 (3d Cir. 2006) stated that it presumed the Board's reference in its decision to having considered the background evidence meant that the Board reviewed the Country Reports and other background evidence and that the Board did not err by not mentioning any of the background evidence specifically. In that case, the Court also cited, for the same general presumption regarding the Board's generalized statement, its prior decision in *Zubeda v. Ashcroft*, 333 F.3d 463, 477 (3d Cir. 2003).

Even where a State Department Country Report is ambiguous or vague, it can support an adverse credibility finding so long as the Board's or the Immigration Judge's use of the information supports the point that is being made. *See Xin Jie Xie v. Ashcroft*, 359 F.3d 239, 243 (3d Cir. 2004), *citing INS v. Ventura*, 537 U.S. 12, 17 (2002).

The information in a State Department Country Report may be rendered inaccurate by rapidly changing country conditions. *See Berishaj v. Ashcroft*, 378 F.3d 314, 329 (3d Cir. 2004) (finding Board’s use of a Country Report that was 3 years out-of-date at time of decision was improper and suggesting that the parties or the Board should request supplemental evidence when a case needs such evidence for a “reasonably correct” decision).

However, the Board errs by “invoking the State Department’s authority” when relying upon a Department of State advisory opinion over the alien’s credible, and corroborated, testimony where the advisory opinion did not contain a means of evaluating the its validity. *See Li Wu Lin v. INS*, 238 F.3d 239, 246 (3d Cir. 2001).

The Board erred in concluding, without analysis, that government of Ghana had outlawed the Trokosi practice and non-governmental organizations had helped to free Trokosi slaves without examining fully that portion of the State Department Country Report which discussed the Trokosi fetish practice as well as by ignoring other documentary evidence of record on this practice. *See Fiadjoe v. U.S. Att’y Gen.*, 411 F.3d 135, 162-63 (3d Cir. 2005).

Generalized information in a State Department Country Report can support an alien’s more detailed testimony. *See Korytnyuk v. Ashcroft*, 396 F.3d 272, 288 (3d Ci. 2005).

Neither an Immigration Judge nor the Board should place wholesale reliance upon the information contained in a Department of State Country Report. *See Li Wu Lin v. INS*, 238 F.3d 239, 248 (3d Cir. 2001).

The Court discussed in some detail issues regarding the authenticity of abortion certificates, inadequacy of testimony regarding the context in which such certificate was obtained by asylum applicant, the State Department Country Report information that such certificates are provided to women who undergo voluntary abortions, and the reasonableness of an Immigration Judge’s inference that the submission of such document might reflect a voluntary abortion rather than an involuntary abortion. *See Xia Yue Chen v. Gonzales*, 434 F.3d 212, 218-20 (3d Cir. 2005)

BUT SEE: It is error for an Immigration Judge or the Board to reject the validity of an abortion certificate submitted by the alien, based upon information in a State Department Country Report that such certificates are issue only for voluntary abortions. *See He Chun Chen v. Ashcroft*, 376 F.3d 215, 226 (3d Cir. 2004).

E. False Documents, including False Statements

The Board erred in relying upon a Consular letter in which the writer stated that the documents provided by the asylum applicant were fraudulent where the writer was not part of the investigatory team or involved in the investigation. *See Ezeagwuna v. Ashcroft*, 325 F.3d 396, 405-8 (3d Cir. 2003) (discussing at length the weaknesses of the consular letter).

F. New Evidence on Appeal

The Board did not err in remanding the record based upon evidence submitted on appeal (through a motion to remand) where the central affidavit contained no dates as to when the document was prepared, the document referenced an event which occurred prior to the alien's final hearing, and the affiant stated that she was in regular contact with the alien. *See Ezeagwuna v. Ashcroft*, 325 F.3d 396, 409-10 (3d Cir. 2003).

The Board did err by not remanding the record based upon evidence submitted on appeal (through a motion to remand) where the alien had submitted a psychological evaluation which the Board found could not have been presented earlier but erroneously found that the information in it was cumulative and not material so as to affect the outcome of the case. *See Ezeagwuna v. Ashcroft*, 325 F.3d 396, 410-11 (3d Cir. 2003).

FOURTH CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

The Immigration Judge, in determining credibility, “must take into account both the petitioner’s testimony and his or her corroborating evidence, whether documentary or testimonial...and thus may not deny asylum merely on the basis of incredible testimony without considering any corroborating evidence.” *Kourouma v. Holder*, 588 F.3d 234, 241 (4th Cir. 2009).

A supportable adverse credibility finding regarding future persecution does not mean that the alien is incredible regarding past persecution. Where the IJ’s credibility findings did not address past persecution, the IJ is deemed to be silent, and the alien will be presumed to be credible on this issue. *See Lin-Jian v. Gonzales*, 489 F.3d 182, 191-92 (4th Cir. 2007).

If the Immigration Judge finds an alien’s testimony about future fear not credible, the alien could still demonstrate eligibility for relief by proving her claim through independent evidence of past persecution. *See Anim v. Mukasey*, 535 F.3d 243, 261 (4th Cir. 2008).

Even where an IJ relies on discrepancies that if taken separately, concern matters collateral or ancillary to the claim, the cumulative effect may nevertheless be deemed consequential by the fact-finder. *See Dankam v. Gonzales*, 495 F.3d 113, 122 (4th Cir. 2007). BUT NOTE: The court also found that some of the discrepancies were not minor.

An adverse credibility finding is usually fatal to an alien’s claim for asylum unless the alien can independently prove past persecution. *See Rusu v. INS*, 296 F.3d 316, 323 (4th Cir. 2002).

An alien meets his or her burden of proof through persuasive testimony and “real proof of objective facts.” *Huaman-Cornelio v. Bd. of Immigration Appeals*, 979 F.2d 995, 999 (4th Cir. 1992).

In the absence of an express adverse credibility determination, an asylum applicant’s testimony is presumed to be credible (pre-REAL ID Act standard). *See Marynenka v. Holder*, 592 F.3d 594, 600-01 (4th Cir. 2009); *Lin-Jian v. Gonzales*, 489 F.3d 182, 191 (4th Cir. 2007).

An Immigration Judge’s adverse credibility finding must be supported by specific, cogent reasons. *See Tewabe v. Gonzales*, 446 F.3d 533, 538 (4th Cir. 2006). *See also Figeroa v. INS*, 886 F.2d 76, 78 (4th Cir. 1989).

“Examples of specific and cogent reasons include ‘inconsistent statements, contradictory evidence, and inherently improbably testimony; [in particular,] where these circumstances exist in view of the background evidence on country conditions, it is appropriate for an Immigration Judge to make an

adverse credibility determination on such a basis.” See *Tewabe v. Gonzales*, 446 F.3d 533, 538 (4th Cir. 2006), quoting *Matter of S-M-J-*, 21 I&N Dec. 722, 729 (BIA 1997).

BUT SEE: In an unpublished decision, the Court held that a single “misstep” in an alien’s otherwise credible testimony is not a specific and cogent reason for finding the alien not credible. See *Yongduan Chen v. Gonzales*, 194 Fed.Appx. 183 (4th Cir. Aug. 16, 2006) (slip copy) (finding alien’s misstatement of date of his wife’s forced abortion, which alien quickly corrected, did not support the Immigration Judge’s adverse credibility finding).

An Immigration Judge need not render an extensive analysis for finding an alien not credible; rather, an Immigration Judge need only provide specific and cogent reasons and “exercise common sense in rejecting [an applicant’s] testimony even if the [Immigration Judge] cannot point to . . . contrary evidence in the record to refute it.” See *Tewabe v. Gonzales*, 446 F.3d 533, 538 (4th Cir. 2006), quoting *Jibril v. Gonzales*, 423 F.3d 1129, 1135 (9th Cir. 2005). See also *Kourouma v. Holder*, 588 F.3d 234, 241 (4th Cir. 2009) (citing to *Tewabe* for the premise that an IJ “need not give extensive reasoning on why each piece of the applicant’s testimony was rejected”); *Lin-Jian v. Gonzales*, 489 F.3d 182, 190 (4th Cir. 2007).

In a case where the Immigration Judge found the alien demonstrated that he warranted asylum, but denied it in the exercise of discretion, the court stated that an Immigration Judge “cannot have it both ways, finding an applicant and his documents incredible for one purpose and yet relying on them for another. . . . This sort of judicial sleight of hand constitutes the very definition of an abuse of discretion.” *Zuh v. Mukasey*, 547 F.3d 504, 513 (4th Cir. 2008).

Predicating an adverse credibility determination on unrelated facts that were erroneously derived from another case was found to be reversible error. *Lin v. Holder*, 611 F.3d 228 (4th Cir. 2010).

B. Asylum Application

NO CASES LISTED

C. Asylum Officer Interview

NO CASES LISTED

D. Conjecture and Speculation

The Immigration Judge’s determination that it would be implausible for medical certificates from Cameroon, although prepared months apart, to be separated by only four digits was “mere speculation or conjecture.” See *Zuh v. Mukasey*, 547 F.3d 504, 509-10 (4th Cir. 2008). Also the Immigration Judge’s discrediting of a Cameroonian newspaper because of non-consecutive page numbers and seemingly mismatched paper was considered to be speculative. *Id.* at 510.

The IJ engaged in improper speculation when she made an adverse credibility finding that was based on an unsupported implicit assumption, *i.e.*, that Chinese airport officials are equipped to identify citizens sought by family planning cadre. *See Lin-Jian v. Gonzales*, 489 F.3d 182, 189 (4th Cir. 2007).

The court rejected the Immigration Judge’s determination that it was implausible that the respondent would not go to the emergency room immediately after being brutally raped, but would instead wait until the next morning; the court stated that such conclusion appeared to be “based on conjecture or unsupported personal opinion.” *Marynenka v. Holder*, 592 F.3d 594, 601-02 (4th Cir. 2009).

If the Immigration Judge’s adverse credibility determination “‘is not based on a specific, cogent reason, but, instead is based on speculation, conjecture, or an otherwise unsupported personal opinion,’ it cannot be upheld ‘because . . . it will not have been supported by substantial evidence.’” *See Tewabe v. Gonzales*, 446 F.3d 533, 538 (4th Cir. 2006), *quoting Dia v. Ashcroft*, 353 F.3d 228, 250 (3d Cir. 2003) (en banc).

E. Credibility v. Plausibility

Where an Immigration Judge finds an alien’s testimony not plausible, *i.e.* “not credible,” the Immigration Judge’s decision must be supported by specific, cogent reasons. *See Tewabe v. Gonzales*, 446 F.3d 533, 539 (4th Cir. 2006) (noting that the Immigration Judge “attached the bare label ‘implausible’ to [the alien’s] testimony without providing specific and cogent reasons for doing so”).

F. Demeanor

In an unpublished decision, the Court accepted the Immigration Judge’s demeanor findings as supporting the adverse credibility determination and stated that “[w]e accord an [Immigration Judge’s] credibility findings substantial deference because the [Immigration Judge] is, ‘by virtue of his acquired skill, uniquely qualified to decide whether an alien’s testimony has about it the ring of truth.’” *See Cruz-Lopez v. United States INS*, 141 F.3d 1157 (4th Cir. 1998), *quoting Sarvia Quintanilla v. INS*, 767 F.2d 13887, 1395 (9th Cir. 1985).

G. Embellishment

NO CASES LISTED

H. Inconsistent Statements

1. Substantial Inconsistencies

The alien’s claim that she was forced to go into hiding was not consistent with her continued employment at her regular place of business. *See Dankam v. Gonzales*, 495 F.3d 113, 121-22 (4th Cir. 2007), *citing Lin-Jian v. Gonzales*, 489 F.3d 182, 189-90 (4th Cir. 2007)

(concluding that an alien’s testimony lacked credibility where he claimed to be in hiding but continued reporting to work).

2. Minor Inconsistencies

NO CASES LISTED

I. Lack of Specific and Detailed Testimony

NO CASES LISTED

J. Omissions

NO CASES LISTED

K. Opportunity to Explain

1. Explanation Required

An alien’s testimony and corroborative documents may support an adverse credibility finding, even where a plausible explanation for the discrepancies is offered. *See Dankam v. Gonzales*, 495 F.3d 113, 122 (4th Cir. 2007), *citng Camara v. Ashcroft*, 378 F.3d 361, 369 (4th Cir. 2004).

2. Explanation **not** Required

NO CASES LISTED

L. REAL ID Act

“[T]he REAL ID Act confers upon courts of appeal a narrowly circumscribed jurisdiction to resolve constitutional claims or questions of law raised by aliens seeking discretionary relief.” *See Higuitt v. Gonzales*, 433 F.3d 417, 419 (4th Cir. 2006).

In a pre-REAL ID Act case, the court observed in a footnote that the REAL ID Act codified the principle that if no adverse credibility determination is explicitly made, there is a rebuttal presumption of credibility on appeal. *Marynenka v. Holder*, 592 F.3d 594, 600, n. (4th Cir. 2009)

In pre-REAL ID Act case, the court considered the “totality of the circumstances” in finding that the Immigration Judge erred in denying asylum based on discretion. *See Zuh v. Mukasey*, 547 F.3d 504, 510 (4th Cir. 2008).

M. Responsiveness to Questions

NO CASES LISTED

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

The Immigration Judge, in determining credibility, “must take into account both the petitioner’s testimony and his or her corroborating evidence, whether documentary or testimonial...and thus may not deny asylum merely on the basis of incredible testimony without considering any corroborating evidence.” *Kourouma v. Holder*, 588 F.3d 234, 241 (4th Cir. 2009).

The requirement that an alien provide a reasonable explanation for the lack of corroborating evidence presumes that the IJ offers the alien an opportunity to explain the absence. *See Lin-Jian v. Gonzales*, 489 F.3d 182, 192 (4th Cir. 2007).

An Immigration Judge properly found that the alien had not met her burden of proof where corroborating evidence of material facts was not presented. *See Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 358-59 (4th Cir. 2006).

The Court will uphold an Immigration Judge’s decision regarding the need for corroborating evidence where 1) the decision reflected that the Immigration Judge considered the evidence presented, identified what evidence was missing which would have aided alien’s claim, explained why it was not unreasonable to expect the alien to present such evidence; and 2) the evidence of record did not independently establish that the alien suffered past persecution on account of one of the five asylum grounds. *See Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 358-59 (4th Cir. 2006), *distinguishing Camara v. Ashcroft*, 378 F.3d 361, 370-72 (4th Cir. 2004).

In *Camara v. Ashcroft*, 378 F.3d 361, 369-70 (4th Cir. 2004), the Immigration Judge did not address the alien’s supporting documentation, which included a “Notice of Escape” which the Court found established that the somewhat discredited alien had suffered past persecution. Thus, although the Court affirmed the adverse credibility finding, it found the fact that the Immigration Judge “ignored” the independent, supporting documentation constituted legal error. The Court made similar findings in an unpublished case, which it described as virtually identical to *Camara*. *See Curumi v. Ashcroft*, 119 Fed.Appx. 468 (4th Cir. 2005).

NOTE: The general standard for credibility, or lack thereof is that “a determination that the applicant’s testimony is not credible will generally defeat the claim. In cases where the applicant can prove actual past persecution, however, a presumption arises that she has the requisite level of fear of persecution, and thus she need not prove the subjective component of ‘well-founded fear.’” *See Camara v. Ashcroft*, 378 F.3d 361, 369-70 (4th Cir. 2004), *citing* 8 C.F.R. § 208.13(b)(1).

An adverse credibility finding is usually fatal to an alien’s claim for asylum unless the alien can independently prove his claim. *See Rusu v. INS*, 296 F.3d 316, 323 (4th Cir. 2002).

1. If Testimony is Credible

An asylum applicant may meet his/her burden of proof through testimony alone without corroboration. “However, even for credible testimony, corroboration may be required when it is reasonable to expect such proof and there is no reasonable explanation for its absence.” *Marynenka v. Holder*, 592 F.3d 594, 601 (4th Cir. 2009); citing *Lin-Jian v. Gonzales*, 489 F.3d 182, 191 (4th Cir. 2007).

The court found legal error where the respondent was presumed credible, but the Immigration Judge discredited a medical record submitted by the respondent because it was not written on clinic letterhead and the respondent had not established a chain of custody, and rejected an additional statement “under what the IJ appeared to regard as a general rule that corroborating evidence requires further corroboration.” *Marynenka v. Holder*, 592 F.3d 594, 601-02 (4th Cir. 2009).

2. If Testimony is **not** Credible

Discrepancies between the alien’s testimony and corroborative evidence that went to the heart of the alien’s claim qualified as cogent reasons supporting an adverse credibility finding. *See Dankam v. Gonzales*, 495 F.3d 113, 121-22 (4th Cir. 2007) (finding that the alien submitted letters using inconsistent dates for her arrest that she did not satisfactorily explain; that there was a significant discrepancy between the testimony of the alien and a witness regarding the length of a detention; that the alien continued to work and obtain travel documents; and that her testimony was inconsistent with medical documents).

Although it found the alien’s testimony not entirely reliable based upon two substantial inconsistencies, the Court found the other bases for the Immigration Judge’s adverse credibility finding to be unsupported by the record. The Court also found that the Immigration Judge erred by not evaluating the alien’s credibility, or lack thereof, with reference to the documentary evidence submitted to support the alien’s asylum application. *See Camara v. Ashcroft*, 378 F.3d 361, 369-70 (4th Cir. 2004); *see also Anim v. Mukasey*, 535 F.3d 243, 261 (4th Cir. 2008).

B. Airport Statements

NO CASES LISTED

C. Authentication of Documents

The court disagreed with the Immigration Judge’s rejection of letters from the alien’s family because they were not sworn affidavits, despite the alien’s authentication of the letters through his testimony. The court found that the unsworn nature of the documents provided no basis for the Immigration Judge’s refusal to credit them. *See Zuh v. Mukasey*, 547 F.3d 504, 508-09 (4th Cir. 2008).

“There is no general rule that evidence offered in corroboration requires independent corroboration. Zhurau’s statement therefore could not be discredited on the ground that it *automatically* required corroboration.” *Marynenka v. Holder*, 592 F.3d 594, 602 (4th Cir. 2009).

D. Department of State Country Reports

“A State Department report on country conditions is highly probative evidence in a well-founded fear case.” *Gonahasa v. United States INS*, 181 F.3d 538, 542 (4th Cir. 1999).

“It is true that State Department reports may be flawed and that private groups or news organizations often voice conflicting views. Those conflicting reports, for all their insights, may have drawbacks of their own.” *Gonahasa v. United States INS*, 181 F.3d 538, 542 (4th Cir. 1999), *citing M.A. v. INS*, 899 F.2d 304, 313 (4th Cir. 1990) (en banc).

The Court’s role is “not to reweigh the evidence and determine which of the competing views is more compelling. It is instead to ensure that substantial evidence supports the BIA’s judgment. In most cases, a State Department report provides such substantial evidence. Absent powerful contradictory evidence, the existence of a State Department report supporting the BIA’s judgment will generally suffice to uphold the Board’s decision. Any other rule would invite courts to overturn the foreign affairs assessments of the executive branch.” *See Gonahasa v. United States INS*, 181 F.3d 538, 542-43 (4th Cir. 1999).

NOTE: In an unpublished decision, the Fourth Circuit held that Department of State Country Reports, which had been submitted into evidence and which detailed government torture of detainees in situations arguably the same as that in which alien would find himself upon his removal to his native country, constituted “relevant information regarding conditions in the country of removal,” entitling alien to reopening of his immigration proceedings so that he could present a claim for relief under the Convention Against Torture. *See Tissah v. Ashcroft*, 107 Fed.Appx. 369 (4th Cir. 2004), *quoting* 8 C.F.R. § 1208.16(c)(3)(iv).

E. False Documents, including False Statements

The court rejected an Immigration Judge’s finding that a State Department report found the alien’s documents fraudulent based on multiple hearsay and lack of indicia of reliability. The case has a good discussion of what it is looking for in relying on these types of investigative reports. *See Amin v. Mukasey*, 535 F.3d 243, 257-58 (4th Cir. 2008).

F. New Evidence on Appeal

NO CASES LISTED

FIFTH CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

“The factfinder has the duty to judge the credibility of the witnesses and to make findings accordingly.” *See Efe v. Ashcroft*, 293 F.3d 899, 905 (5th Cir. 2002).

An adverse credibility finding must be supported by specific, cogent reasons and not based upon speculation or conjecture. *See Mwembie v. Gonzales*, 443 F.3d 405, 410 (5th Cir. 2006) (detailing the Immigration Judge’s errors regarding alleged lack of detail and implausibilities). *See also Yi Wu Zhang v. Gonzales*, 432 F.3d 339, 345 (5th Cir. 2005) (upholding Immigration Judge’s adverse credibility finding where specific, cogent reasons given and where alien had failed to provide corroborating evidence). *See generally, Zhu Yu Chun v. INS*, 40 F.3d 76 (5th Cir. 1994) (finding Immigration Judge’s adverse credibility finding supported by the record); *see Efe v. Ashcroft*, 293 F.3d 899, 906-08 (5th Cir. 2002) (finding that although a CAT claim should receive separate analytical attention, the adverse credibility finding directly addressed the CAT claim).

B. Asylum Application

The Immigration Judge’s adverse credibility findings, based upon inconsistencies in the alien’s testimony and her asylum claim, were supported by the record. *See Zhu Yu Chun v. INS*, 40 F.3d 76 (5th Cir. 1994). *See also Sai Moe Aung v. Gonzales*, 197 Fed. Appx. 344 (5th Cir. 2006).

C. Asylum Officer Interview

NO CASES LISTED

D. Conjecture and Speculation

Adverse credibility findings which are not supported by the record or are supported by speculation or conjecture will not be upheld. *See Mwembie v. Gonzales*, 443 F3d 405, 410 (5th Cir. 2006).

E. Credibility v. Plausibility

NO CASES LISTED

F. Demeanor

The court acknowledged that where the respondent presented a facially compelling claim of arrest and beating on account of her religious beliefs, that “much depends upon demeanor and inferences to be drawn therefrom.” The court thus deferred to the Immigration Judge’s discrediting of the respondent’s excuse that she had trouble understanding the interpreter when confronted with a discrepancy (where the IJ observed that the respondent seemed to have no similar problems on direct examination). *Wang v. Holder*, 569 F.3d 531, 539 (5th Cir. 2009).

In an unpublished case, the Court has upheld adverse credibility finding which relied, in part, on demeanor stating that it was reasonable for the Immigration Judge to make an adverse credibility determination. *See Tonge v. Gonzales*, 2006 WL 1826694 (5th Cir. June 27, 2006) (slip copy).

G. Embellishment

In an unpublished decision, the Court held that an alien’s omission of a key event from his asylum application indicated that the alien’s testimony about this event was an embellishment. *See Sai Moe Aung v. Gonzales*, 197 Fed. Appx. 344, 346(5th Cir. 2006).

H. Inconsistent Statements

The Immigration Judge’s adverse credibility findings, based upon inconsistencies in the alien’s testimony and her asylum claim, were supported by the record. *See Zhu Yu Chun v. INS*, 40 F.3d 76 (5th Cir. 1994).

1. Substantial Inconsistencies

NO CASES LISTED

2. Minor Inconsistencies

Minor inconsistencies (such as the number of times the police visited, the duration of beating), when considered cumulatively can support an adverse credibility finding, particularly where the alien omitted major events. *See Haxhiaj v. Mukasey*, No. 07-60880, 2009 WL 4690512 (5th Cir. Oct. 24, 2008) (unpublished).

I. Lack of Specific and Detailed Testimony

NO CASES LISTED

J. Omissions

NO CASES LISTED

K. Opportunity to Explain

NO CASES LISTED

1. Explanation Required

NO CASES LISTED

2. Explanation **not** Required

NO CASES LISTED

L. REAL ID Act

The court adopted the formulation of the United States Court of Appeals for the Second Circuit in determining what the standard of review is as to credibility findings under the REAL ID Act. Under such formulation, “an IJ may rely on *any* inconsistency or omission in making an adverse credibility determination as long as the ‘totality of the circumstances’ establishes that an alien is not credible.” *Wang v. Holder*, 569 F.3d 531, 538 (5th Cir. 2009) (*citing Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008)).

M. Responsiveness to Questions

NO CASES LISTED

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

1. If Testimony is Credible

An alien whose testimony is credible may meet his or her burden of proof through testimony alone without presenting corroborating evidence. *See Abdel-Masieh v. United States INS*, 73 F.3d 579, 584 (5th Cir. 1996).

An unpublished case, supports that an alien may rely on testimony alone. The court found the Board’s and Immigration Judge’s reliance on the lack of testimony from family members to be misplaced as there was no evidence that they had any knowledge about the events. The court also found that the consular investigative report finding that a subpoena was fabricated was not sufficiently reliable to support adverse credibility determination. *See Cai Gui Chen v. Filip*, No. 09-188126, 2009 WL 188126 (5th Cir. Jan. 27, 2009) (slip copy).

2. If Testimony is **not** Credible

Where alien had failed to provide corroborating evidence of his arrest and maltreatment or that he was a Falun Gong practitioner, the Immigration Judge's adverse credibility finding was upheld. *See Yi Wu Zhang v. Gonzales*, 432 F.3d 339, 345 (5th Cir. 2005). *See also Malhotra v. Ashcroft*, 111 Fed.Appx. 757 (5th Cir. 2004) (upholding Immigration Judge's adverse credibility finding, which was based upon inconsistencies and agreeing that the alien should have provided corroborating evidence given his lack of credibility); *Beganovic v. Ashcroft*, 106 Fed.Appx. 279 (5th Cir. 2004); *Kabeya v. Ashcroft*, 75 Fed.Appx. 967 (5th Cir. 2003).

B. Airport Statements

NO CASES LISTED

C. Authentication of Documents

NO CASES LISTED

D. Department of State Country Reports

NO CASES LISTED

BUT SEE: The Court rejected the aliens' claim that they did not receive a fair hearing because the Department of State advisory opinion examined, from their asylum application, only their claim of employment opportunities in the United States but failed to address their claims of beatings and imprisonment. *See Paul v. INS*, 521 F.2d 194, 200 (5th Cir. 1975). The Court found that the erroneous recommendations set forth in the advisory opinion did not result in an unfair hearing because neither the Immigration Judge nor the Board relied upon the recommendations when denying the aliens' application for asylum. *See Paul v. INS*, 521 F.2d 194, 200 (5th Cir. 1975).

NOTE: Up through the mid-1990s, the Department of State would be sent a copy of an alien's asylum application and would then send the Immigration Judge an "advisory opinion" in which it provided any information that it might know of about the alien or recommended whether the alien's claim had merit under existing country conditions. Advisory opinions were non-binding on Immigration Judges and the Board and are no longer provided.

E. False Documents, including False Statements

NO CASES LISTED

F. New Evidence on Appeal

NO CASES LISTED

SIXTH CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

Substantial evidence did not support an adverse credibility finding based on minor inconsistencies or discrepancies that did not go to the heart of the claim, an Assessment to Refer that was not shown to be reliable, and a key factual mistake. *See Koulibaly v. Mukasey*, 541 F.3d 613 (6th Cir. 2008).

The IJ's erroneous credibility determination regarding asylum also erroneously infected his analysis of the alien's CAT claim. *See Mapouya v. Gonzales*, 487 F.3d 396, 415 (6th Cir. 2007).

An Immigration Judge's adverse credibility finding must be supported by specific, cogent reasons and relate to issues which go to the heart of the alien's claim. *See Duan Ying Chen v. Gonzales*, 447 F.3d 468, 472 (6th Cir. 2006), *citing Sylla v. INS*, 388 F.3d 924, 925-26 (6th Cir. 2004). *See also Shkabari v. Gonzales*, 427 F.3d 324, 329 (6th Cir. 2006).

An adverse credibility finding must reflect an intelligent understanding of the country conditions involved in the alien's case. *See N'Diom v. Gonzales*, 442 F.3d 494, 500 n. 1 (6th Cir. 2006).

NOTE: The dissent in *N'Diom v. Gonzales*, 442 F.3d 494 (6th Cir. 2006) would have upheld the Immigration Judge's adverse credibility finding which the Board had affirmed.

Discrepancies that “cannot be viewed as attempts by the applicant to enhance his claims of persecution, [] have no bearing on credibility.” *See Shkabari v. Gonzales*, 427 F.3d 324, 329 (6th Cir. 2006) (finding that alien's testimony that he was a chairman of the youth forum of the Democratic Party where such fact was omitted from the asylum application (which did include fact that alien's wife was a youth forum leader) did not go to the heart of the alien's claim), *quoting Sylla v. INS*, 388 F.3d 924, 926 (6th Cir. 2006). *See also Duan Ying Chen v. Gonzales*, 447 F.3d 468, 476 (6th Cir. 2006) (stating that any inconsistencies regarding how an alien escaped from village officials, such as the vehicle used, do not go to the heart of the asylum claim); *Kaba v. Mukasey*, 546 F.3d 741, 749 (6th Cir. 2008), which cites *Sylla v. INS*, 388 F.3d 924, 925 (6th Cir. 2004) for the proposition that discrepancies must be viewed as attempts to enhance a claim.

Where the IJ or BIA expresses suspicion about an applicant's credibility without making an explicit adverse credibility finding, and then denies relief on another ground, the Court will assume credibility; if it concludes that the non-credibility basis for denial was in error, it will remand for a credibility determination. *Cruz-Samayoa v. Holder*, 607 F.3d 1145 (6th Cir. 2010); *Haider v. Holder*, 595 F.3d 276 (6th Cir. 2010).

B. Asylum Application

“[T]he mere failure of an [alien] to include every detail of an asylum claim in the application itself should not be considered fatal to . . . a request for relief. On the other hand, an application should contain at least some indication of the type of assertions that will be made in support of a claim. [The] complete lack of specificity in [an] application justifies the immigration judge’s skepticism about the validity of those claims. . . .” *Kaba v. Mukasey*, 546 F.3d 741, 749-50 (6th Cir. 2008).

Omission of information from an asylum application will not necessarily support an adverse credibility finding as an alien may testify in greater detail at his or her hearing. *See Shkabari v. Gonzales*, 427 F.3d 324, 330 (6th Cir. 2006), *citing Liti v. Gonzales*, 411 F.3d 631, 638 (6th Cir. 2005). *See also Mapouya v. Gonzales*, 487 F.3d 396, 407 n.11 (6th Cir. 2007) (noting that the failure of an applicant to provide an exhaustive list of details in his original asylum application does not amount to an inconsistency warranting an adverse credibility finding).

An alien need not exhaustively detail his or her experiences on the asylum application. *See Liti v. Gonzales*, 411 F.3d 631, 638 (6th Cir. 2005).

An adverse credibility finding was supported by key inconsistencies between an asylum application and testimony, where the Immigration Judge rejected the alien’s explanation for the inconsistencies. *See Singh v. Ashcroft*, 398 F.3d 396, 402 (6th Cir. 2005). *See also Kante v. Holder*, —F.3d—, 2011 WL 63594 (6th Cir. 2011); *Zhao v. Mukasey*, 569 F.3d 238 (6th Cir. 2009).

The IJ’s adverse credibility finding was supported by substantial evidence where there were conflicts between the alien’s application for asylum and his testimony as well as his attempts to explain away inconsistencies by stating that his application concerned events that might happen or had happened to others and that he did not mean to use the application that was filed. *See Amir v. Gonzales*, 467 F.3d 921, 925 (6th Cir. 2006).

C. Asylum Officer Interview

When considering an Assessment to Refer, a court must first determine “whether and to what extent there exist sufficient indicia of reliability.” *Koulibaly v. Mukasey*, 541 F.3d 613, 621 (6th Cir. 2008). This case provides guidelines as to indicia of reliability. *See Koulibaly v. Mukasey*, 541 F.3d 613, 621 (6th Cir. 2008).

D. Conjecture and Speculation

An Immigration Judge’s “[s]peculation and conjecture cannot form the basis of an adverse credibility finding, which must instead be based on substantial evidence.” *See Vasha v. Gonzales*, 410 F.3d 863, 869 (6th Cir. 2005), *quoting Shire v. Ashcroft*, 388 F.3d 1288, 1296 (9th Cir. 2004).

An Immigration Judge’s speculation, concerning how long beatings or detentions should last, will not support an adverse credibility finding. *See Alexandrov v. Gonzales*, 442 F.3d 395, 408-09 (6th

Cir. 2006). *See also Mapouya v. Gonzales*, 487 F.3d 396, 407-08 (6th Cir. 2007) (Imputing a meaning to the word “fighter” was conjecture).

E. Credibility v. Plausibility

“Under BIA rulings, credibility encompasses not just consistency but also plausibility and sufficient detail.” *See Dorosh v. Ashcroft*, 398 F.3d 379, 382 (6th Cir. 2004), *citing Matter of M-D-*, 21 I&N Dec. 1180, 1182 (BIA 1998). NOTE: The Court had previously cited *Matter of S-M-J*, 21 I&N Dec. 722, 724-26 (BIA 1997) and had noted that *Matter of M-D-* had cited *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989).

F. Demeanor

NO CASES LISTED

G. Embellishment

One “bold, otherwise unqualified statement . . . in his amended application” that his family was “completely uprooted by the . . . violence in the Ivory Coast . . . and forced to flee” “inevitably calls [the alien’s] credibility into question.” *Kaba v. Mukasey*, 546 F.3d 741, 750 (6th Cir. 2008).

H. Inconsistent Statements

1. Substantial Inconsistencies

Discrepancies may be relevant if they can be viewed as attempts to enhance the claim of persecution. *Kante v. Holder*, —F.3d—, 2011 WL 63594 (6th Cir. 2011 (Pre-REAL ID case); *Ndrecaj v. Mukasey*, 522 F.3d 667, 674-75 (6th Cir. 2008).

The Immigration Judge’s adverse credibility finding was supported by inconsistencies between his application and his testimony that were significant and went to the heart of the claim. *See Zhao v. Mukasey*, 569 F.3d 238 (6th Cir. 2009). BUT NOTE: Some of the five inconsistencies would most likely be considered minor in other circuits (date of forced abortion and who notified alien that the authorities were looking for him), but the court cited to the REAL ID Act standards, even though this was a pre-REAL ID Act case. This case may be an aberration.

The IJ’s adverse credibility finding was supported by substantial evidence where there were conflicts between the alien’s application for asylum and his testimony as well as his attempts to explain away inconsistencies by stating that his application concerned events that might happen or had happened to others and that he did not mean to use the application that was filed. *See Amir v. Gonzales*, 467 F.3d 921, 925 (6th Cir. 2006).

Conflicts such as stating in the asylum application that he was arrested but testifying that he was not; stating in the asylum application that he was held for defaming Islam and testifying that he was not; stating in the asylum application that he came to the United States because he feared a trial but testifying that that was not the main reason, along with the alien's explanations that the asylum application set forth what might happen and that he did not mean to send the application that was filed, were found to be significant and going to the heart of the alien's claims. *See Amir v. Gonzales*, 467 F.3d 921, 925 (6th Cir. 2006). *See also Berri v. Gonzales*, 468 F.3d 390, 395 (6th Cir. 2006) (noting that although an individual may forget exact details of traumatic events, the events are significant and memorable such that a wide discrepancy in testimony demonstrated substantial evidence supporting the IJ's adverse credibility finding).

2. Minor Inconsistencies

An inconsistency as to where an alien was when she was arrested does not serve to enhance her claim, and therefore, will not support an adverse credibility finding. *See Koulibaly v. Mukasey*, 541 F. 613, 623 (6th Cir. 2008).

As differences in an alien's testimony, asylum applications, and an Assessment to Refer concerning the arrest of the alien's husband, were considered “*de minimis* in scope or chimerical in nature,” they did not justify the adverse credibility finding. *Koulibaly v. Mukasey*, 541 F. 613, 622 (6th Cir. 2008), *quoting Abbo v. Gonzales*, 150 Fed.Appx. 524, 528 (6th Cir. 2005).

Minor inconsistencies which do not go to the heart of an alien's asylum claim do not support an adverse credibility finding. *See Sylla v. Ashcroft*, 388 F.3d 924, 926 (6th Cir. 2004) (finding inconsistencies regarding amount paid for political party membership card and dates alien was a student as indicated on membership card were minor and irrelevant).

The omission of a child from the first asylum application, where the birth date of the one child listed was the birth date of the omitted second child, did not support an adverse credibility finding as such a mix-up is not “germane to the crucial issue” regarding whether the alien's wife was forcibly sterilized after the birth of the second (omitted) child. *See Duan Ying Chen v. Gonzales*, 447 F.3d 468, 475 (6th Cir. 2006).

NOTE: The Court speculates that the non-English speaking/reading alien's omission of the second child on the second asylum application completed 5 years later may have been due to a failure to verify the accuracy of the information prior to the filing of the application with the Immigration Court. *See Duan Ying Chen v. Gonzales*, 447 F.3d 468, 475-76 (6th Cir. 2006). This suggests that it is important for the Immigration Judge to ascertain whether the information was read back to the alien in a language that he or she understood so as to determine whether the alien was aware of any inaccuracies.

I. Lack of Specific and Detailed Testimony

The Court seems to implicitly accept that an alien's lack of detail could support an adverse credibility finding where detail would be reasonably expected but rejected this basis for the Immigration Judge's adverse credibility finding, where the record demonstrated that the alien gave specific answers to the questions asked of him and provided corroborating evidence. *See Sylla v. Ashcroft*, 388 F.3d 924, 926-29 (6th Cir. 2004).

J. Omissions

The failure to mention hospitalization after detention and beating in an asylum application did not support an adverse credibility finding, as an alien need not “provide an exhaustive list of details” in the application because the “circumstances surrounding the application process do not often lend themselves to a perfectly complete and comprehensive recitation of an applicant's claim to asylum or withholding.” *Koulibaly v. Mukasey*, 541 F. 613, 623 (6th Cir. 2008), quoting *Hamida v. Gonzales*, 478 F.3d 734, 739 (6th Cir. 2007) (itself quoting *Liti v. Gonzales*, 411 F.3d 631, 638 (6th Cir. 2005)).

Omissions from an asylum application may support an adverse credibility finding as long as they are “substantially” related to the asylum claim. *See Liti v. Gonzales*, 411 F.3d 631, 637 (6th Cir. 2005); *Vasha v. Gonzales*, 410 F.3d 863, 871 n.4 (6th Cir. 2005), citing *Secaida-Rosales v. INS*, 331 F.3d 297, 308 (2d Cir. 2003).

The Immigration Judge erred in finding that facts and events related in the alien's 2001 hearing, but which were not mentioned in the alien's testimony before an Immigration Judge at his 1993 hearing, supported a finding that the alien was not credible. *See Duan Ying Chen v. Gonzales*, 447 F.3d 468, 474-75 (6th Cir. 2006). *See also Liti v. Gonzales*, 411 F.3d 631, 638 (6th Cir. 2005) (finding that omissions from asylum application did not support adverse credibility finding where alien and alien's family had long history of persecution, the details of which could not all be put down in an asylum application).

NOTE: The Sixth Circuit's analysis on this point in *Duan Ying Chen v. Gonzales* would seem to gut any adverse credibility finding based upon omission of fairly key events as the Court explains the omissions to its satisfaction despite the fact that the alien was represented by counsel at the 1993 hearing and sought asylum based upon the same family planning claim (albeit before the 1996 amendment of the definition of a refugee to include family planning issues).

But *cf. Zhao v. Holder*, 569 F.3d 238, 248 (6th Cir. 2009), where the IJ relied on the respondent's failure to mention a fact contained in his I-589 until he was eventually raised by the IJ: “Although this inconsistency may be the fault of his counsel for failing to elicit this during his direct examination, the fact remains that the IJ, present for Zhao's testimony, found it to be relevant to his credibility. We will not disturb this finding.” (Pre-REAL ID Act case).

An alien's explanations for the omission of information from an asylum application or asylum officer interview must be discussed if such omissions are used to support an adverse credibility finding. *See N'Diom v. Gonzales*, 442 F.3d 494, 499 (6th Cir. 2006) (noting that neither the Immigration Judge nor the Board discussed why the alien's explanation that the translator who wrote the asylum application left out facts and the asylum officer told alien to "keep it short" was insufficient to explain the omissions).

The Immigration Judge attached "undue significance" to the fact that the alien failed to mention his brother's two other arrests or injury as the failure of his brother to inform him about the events "only arguably suggests" an attempt to enhance the alien's claims. *Kaba v. Mukasey*, 546 F.3d 741, 749 (6th Cir. 2008).

K. Opportunity to Explain

An alien's plausible explanation for an inconsistency will not overcome an adverse credibility finding if the Immigration Judge's "contrary interpretation" of the inconsistency is not unreasonable. *See Shkabari v. Gonzales*, 427 F.3d 324, 330 (6th Cir. 2006), *citing Singh v. Ashcroft*, 398 F.3d 396 402 (6th Cir. 2005).

1. Explanation Required

NO CASES LISTED

2. Explanation **not** Required

NO CASES LISTED

L. REAL ID Act

Under the REAL ID Act standard, "the IJ's adverse credibility determination would stand even if this court would come to a different conclusion under prior law." The court found the IJ's overall adverse credibility determination to be entitled to deference where such determination was based on several cited discrepancies that were supported by the record, regardless of whether such discrepancies went to the heart of the claim. *El-Moussa v. Holder*, 569 F.3d 250, 256 (6th Cir. 2009).

The Court lacks jurisdiction under the REAL ID Act to review a finding that the alien's asylum application was untimely filed unless it raises a constitutional claim or question of law. *See Almuhtaseb v. Gonzales*, 453 F.3d 743, 747-48 (6th Cir. 2006) (adopting the view of the Second Circuit in *Chen v. U.S. Dept. of Justice*, 434 F.3d 144,151-54 (2d Cir. 2006).

M. Responsiveness to Questions

NO CASES LISTED

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

“An IJ is permitted to rely on the failure of an alien to present corroborating evidence when making a credibility determination and where there are also inconsistencies in the alien’s testimony.” *Ikharo v. Holder*, 614 F.3d 622, 634 (6th Cir. 2010).

An alien’s allegations of torture (CAT) are not automatically incredible simply for failure to produce corroborating documentary evidence. *See Mapouya v. Gonzales*, 487 F.3d 396, 415 (6th Cir. 2007) (finding that the IJ’s adverse credibility finding as to asylum also infected his analysis of the CAT claim).

An Immigration Judge should clearly set forth his or her reasons for finding corroborating evidence not credible. *See Shkabari v. Gonzales*, 427 F.3d 324, 328-29 (6th Cir. 2006) (discussing Immigration Judge’s contradictory statements regarding whether the corroborating evidence was credible and reasons for need for clarity before finding the Immigration Judge’s sufficiently clear to sustain the Court’s review).

Neither case law nor the regulations require an alien to meet his or her burden of proof by providing corroborating evidence in the form of a second medical opinion, from a medical practitioner in the United States (verifying that the alien was sterilized), where the regulations allow for an alien’s credible testimony alone to be sufficient. *See Duan Ying Chen v. Gonzales*, 447 F.3d 468, 476 (6th Cir. 2006) (alien had submitted a surgical certificate, x-rays, and photographs).

1. If Testimony is Credible

An Immigration Judge can require an alien to present reasonably available corroborating evidence, even where the alien’s testimony is credible, and the failure to present such evidence can support a finding that the alien did not meet his or her burden of proof. *See Shkabari v. Gonzales*, 427 F.3d 324, 331 (6th Cir. 2006). *See also Dorosh v. Ashcroft* 398 F.3d 379, 382 (6th Cir. 2004) (rejecting Ninth Circuit view that neither an Immigration Judge nor the Board can require corroborating evidence if an alien presents credible testimony and expressly joining the Second and Third Circuits in approving the Board’s corroboration rule).

An Immigration Judge cannot insist on the submission of corroborating evidence but can require it if such evidence is ““of the type that would normally be created or available in the particular country and is accessible to the alien, such as through friends, relatives or co-workers.”” *See Vasha v. Gonzales*, 410 F.3d 863, 872 n. 3 (6th Cir. 2005), *quoting Dorosh v. Ashcroft*, 398 F.3d 379, 382-83 (6th Cir. 2004) (discussing types of evidence that the Court has found to be unreasonable to expect); *Perkovic v. INS*, 33 F.3d 615 (6th Cir. 1994).

2. If Testimony is **not** Credible

The Immigration Judge properly considered the lack of corroboration where the alien's testimony "was riddled with inconsistencies." *Zhao v. Mukasey*, 569 F.3d 238, 248 (6th Cir. 2009). The court noted that the inconsistencies cited tended to enhance the claim of persecution, and the respondent was unable to identify evidence sufficient to compel a contrary to that reached by the IJ. *Id.*

The lack of corroborating evidence can support an adverse credibility finding where such evidence was reasonably available. *See Pilica v. Ashcroft*, 388 F.3d 941, 954 (6th Cir. 2004).

An Immigration Judge is not required to accept an alien's explanation for the lack of reasonably available corroborating evidence. *See Pilica v. Ashcroft*, 388 F.3d 941, 954 n.15 (6th Cir. 2004).

"An applicant's presentation of "a fraudulent document 'to prove a central element of the claim in an asylum adjudication . . . in the absence of an explanation regarding such presentation [] creates serious doubts regarding the [applicant's] overall credibility.'" *See Sterkaj v. Gonzales*, 439 F.3d 273, 277 (6th Cir. 2006), *quoting Selami v. Gonzales*, 423 F.3d 621, 625 (6th Cir. 2005) (itself quoting *Matter of O-D-*, 21 I&N Dec. 1079, 1083 (BIA 1998)).

The Immigration Judge erred in finding an alien not credible based upon a finding that the corroborating documents (notarial birth certificates) did not support the alien's testimony based upon erroneous conclusion, without reference to the Department of State Country Report, that no field investigation regarding the accuracy of the information was conducted. *See Duan Ying Chen v. Gonzales*, 447 F.3d 468, 472-73 (6th Cir. 2006).

The Immigration Judge erred in relying upon factors identified in the Department of State Country Report as examples of common elements in fraudulent family planning claims where the alien's testimony included several elements which differed and did not "fall neatly into the formulaic recitations" set forth in the Country Report. *See Duan Ying Chen v. Gonzales*, 447 F.3d 468, 473 (6th Cir. 2006).

B. Airport Statements

An alien's omission at an airport interview of a crucial basis for his asylum claim (Falun Gong) supported an adverse credibility finding when viewed together with the alien's inconsistencies between his testimony, asylum application, and credible fear interview. *See Guang Run Yu v. Ashcroft*, 364 F.3d 700, 703-04 (6th Cir. 2004).

C. Authentication of Documents

An Immigration Judge errs by relying too heavily upon reports which contain multiple levels of hearsay and are prepared by the Department of State. *See Alexandrov v. Gonzales*, 442 F.3d 395, 405 (6th Cir. 2006) (discussing at length the significant problems in, and lack of reliability of, two DOS Embassy reports in which the Embassy writers found that the subpoena and conviction documents submitted by the alien were fraudulent and discussed these at length), *citing Ezeagwuna v. Ashcroft*, 325 F.3d 396 (3d Cir. 2003).

NOTE: There was a dissent in this case which found the multiple hearsay troubling but would not have found the Immigration Judge's reliance upon the two Embassy reports to have been fundamentally unfair.

BUT SEE: *Sterkaj v. Gonzales*, 439 F.3d 273, 277 (6th Cir. 2006) (finding alien's claim that the Embassy investigator was unreliable and thus report finding document to be fraudulent, to be unsupported). The alien had adequate opportunity, but was unable to explain the fraud. The Court reached a similar conclusion in an unpublished case: *Shllaku v. Gonzales*, 139 Fed.Appx. 700, 702 (6th Cir. 2005).

D. Department of State Country Reports

Department of State Country Reports “are generally the best source of information on conditions in foreign nations.” *See Sterkaj v. Gonzales*, 439 F.3d 273, 276 (6th Cir. 2006), *quoting Mullai v. Ashcroft*, 385 F.3d 635, 639 (6th Cir. 2004).

An Immigration Judge errs in relying upon a Department of State Country Report to support an adverse credibility finding where the Country Report contains information which supports the alien's asylum claim. *See Sylla v. Ashcroft*, 388 F.3d 924, 929 (6th Cir. 2004).

Chinese notarial certificates are sufficient to establish the facts contained therein where the documents indicate that they are “notarial certificates” and not just notarial documents as the Department of State Country Reports indicate that such certificates are issued after a field investigation to determine the accuracy of the information since no reliable documents exist in China to establish relationships. *See Duan Ying Chen v. Gonzales*, 447 F.3d 468, 472-73 (6th Cir. 2006).

The Immigration Judge erred in finding an alien not credible based upon a finding that the corroborating documents (notarial birth certificates) did not support the alien's testimony based upon erroneous conclusion, without reference to the Department of State Country Report, that no field investigation regarding the accuracy of the information was conducted. *See Duan Ying Chen v. Gonzales*, 447 F.3d 468, 472-73 (6th Cir. 2006).

The Immigration Judge erred in relying upon factors identified in the Department of State Country Report as examples of common elements in fraudulent family planning claims where the alien's testimony included several elements which differed and did not “fall neatly into the formulaic recitations” set forth in the Country Report. *See Duan Ying Chen v. Gonzales*, 447 F.3d 468, 473 (6th Cir. 2006).

E. False Documents, including False Statements

“[S]ubmission of a fraudulent document in support of a key element of an asylum claim is sufficient to support an adverse credibility finding.” See *Selami v. Gonzales*, 423 F.3d 621, 625 (6th Cir. 2006), citing a string of unpublished Sixth Circuit cases and *Matter of O-D-*, 21 I&N Dec. 1079, 1083 (BIA 1998).

An alien’s contention that a fraudulent document did not go to the heart of the alien’s asylum claim does not have merit where the fraudulent document was submitted for the purpose of corroborating the alien’s claim that he suffered past persecution and has a well-founded fear of persecution. See *Selami v. Gonzales*, 423 F.3d 621, 625-26 (6th Cir. 2006) (finding that fraudulent newspaper article regarding alien and alien’s alleged persecution went to heart of alien’s asylum claim).

An alien’s claim that he or she did not know that the submitted document was fraudulent because it was obtained for the alien by another person is insufficient to overcome the effects of having provided a fraudulent document where the obvious nature of fraud or forgery precludes a finding that the alien had no reason to know that the document was fraudulent. See *Sterkaj v. Gonzales*, 439 F.3d 273, 277 (6th Cir. 2006); *Selami v. Gonzales*, 423 F.3d 621, 626 (6th Cir. 2005).

A fraudulent document does not undermine an alien’s credibility if the alien has no reason to know that the document is fraudulent although the document does not help the alien’s credibility as would a corroborating document that is not fraudulent. See *Selami v. Gonzales*, 423 F.3d 621, 626 (6th Cir. 2006), citing *Kourski v. Ashcroft*, 355 F.3d 1038, 1040 (7th Cir. 2004).

NOTE: In *Selami v. Gonzales*, 423 F.3d 621, 626 (6th Cir. 2006), the Court found that the fraudulent nature of the news article was readily apparent, the alien had not questioned his father about its authenticity, and the alien never stated that he lacked knowledge of the forgery. The Court also contrasted the fraudulent news article in the case before it to the fraudulent birth certificate at issue in *Kourski v. Ashcroft*, 355 F.3d 1038, 1040 (7th Cir. 2004) which the Seventh Circuit found to be a “subtle” forgery which might have fooled the alien.

An alien’s explanation that he or she does not know how the fraudulent document was obtained or why it was filed with the Immigration Judge will not overcome the adverse effects on the alien’s credibility where the alien had provided the document with the asylum application, swore before the Immigration Judge that the documents attached to the asylum application were true to the best of the alien’s knowledge, and failed to repudiate the fraudulent document until questioned on cross-examination. See *Sterkaj v. Gonzales*, 439 F.3d 273, 278 (6th Cir. 2006).

An Immigration Judge errs by relying too heavily upon reports which contain multiple levels of hearsay and are prepared by the Department of State. See *Alexandrov v. Gonzales*, 442 F.3d 395, 405 (6th Cir. 2006) (discussing at length the significant problems in, and lack of reliability of, two DOS Embassy reports in which the Embassy writers found that the subpoena and conviction

documents submitted by the alien were fraudulent, and discussed these at length), *citing Ezeagwuna v. Ashcroft*, 325 F.3d 396 (3d Cir. 2003).

NOTE: There was a dissent in this case which found the multiple hearsay troubling but would not have found the Immigration Judge's reliance upon the two Embassy reports to have been fundamentally unfair.

F. New Evidence on Appeal

NO CASES LISTED

SEVENTH CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

“The Attorney General's supplemental authority asserts that inasmuch as the BIA did not expressly reject the IJ's adverse credibility finding, it adopted that finding.” *Kadia v. Holder*, No. 07-3604, 2009 WL 414674 (7th Cir. Feb. 20, 2009). But note that in this REAL ID Act case, had the Board not adopted the Immigration Judge's adverse credibility finding, past persecution would have been demonstrated. The Board chose not to address the adverse credibility finding. The court also found that the Board's decision lacked reasoned analysis.

Notwithstanding mistakes by the Immigration Judge (misinterpretation, misreading, or mischaracterization of testimony), the court found that the “balance of the evidence relied on” by the Immigration Judge supported his adverse credibility finding, where the Board emphasized a proper basis. *See Musollari v. Mukasey*, 545 F.3d 505, 510 (7th Cir. 2008). But note that the dissent found that the errors significant enough to taint the adverse credibility finding.

An alien may prevail on a theory of future persecution despite an IJ's adverse credibility ruling as to past persecution so long as the factual predicate of the claim of future persecution is independent of the testimony that the IJ found not to be credible. *See Gebreeyesus v. Gonzales*, 482 F.3d 952, 955 (7th Cir. 2007).

An adverse credibility finding must be supported by specific and cogent reasons which “bear a legitimate nexus to the finding.” *See San Kai Kwok v. Gonzales*, 455 F.3d 766, 769 (7th Cir. 2006); *Guo H. Huang v. Gonzales*, 453 F.3d 942, 945 (7th Cir. 2006); *Gjerazi v. Gonzales*, 435 F.3d 800, 807 (7th Cir. 2006); *Mansour v. INS*, 230 F.3d 902, 906 (7th Cir. 2000).

NOTE: An adverse credibility finding cannot be supported by “trivial details or easily explained discrepancies” because such inconsistencies do not provide a legitimate nexus to the alien's claim. *See San Kai Kwok v. Gonzales*, 455 F.3d 766, 769 (7th Cir. 2006), quoting *Korniejew v. Ashcroft*, 371 F.3d 377, 387 (7th Cir. 2004).

An Immigration Judge's finding that the alien had not met his burden of establishing that the events recounted were not on account of one of the five asylum grounds is not an adverse credibility finding but rather is a conclusion that the alien had not established the cause of the events. *See Musabelliu v. Gonzales*, 442 F.3d 991, 995 (7th Cir. 2006). *See also Diallo v. Gonzales*, 439 F.3d 764, 766 (7th Cir. 2006) (noting that an Immigration Judge's finding that the alien's testimony was vague and confusing was not an adverse credibility finding).

The reasons for finding an alien not credible must go to the heart of an alien's claim. *See San Kai Kwok v. Gonzales*, 455 F.3d 766, 769 (7th Cir. 2006); *Giday v. Gonzales*, 434 F.3d 543, 550 (7th Cir. 2006). *See also Hussain v. Gonzales*, 424 F.3d 622, 628-30 (7th Cir. 2005) (upholding Immigration Judge's adverse credibility finding and determination that alien failed to provide corroborating evidence); *Pop v. INS*, 270 F.3d 527, 529-32 (7th Cir. 2001) (upholding Immigration Judge's adverse credibility finding).

An adverse credibility finding based upon incomplete or insufficient evidence is not supportable. *See Giday v. Gonzales*, 434 F.3d 543, 550 (7th Cir. 2006).

"Adverse credibility determinations should not be based upon easily explained discrepancies or perceived discrepancies." *Giday v. Gonzales*, 434 F.3d 543, 551 (7th Cir. 2006). *See also Kadia v. Gonzales*, 501 F.3d 817 (7th Cir. 2007); *Korniejew v. Ashcroft*, 371 F.3d 377, 387 (7th Cir. 2004).

A single supportable point going to the heart of an alien's claim may support an adverse credibility finding. *See Guo H. Huang v. Gonzales*, 453 F.3d 942, 945-46 (7th Cir. 2006) (finding supportable the Immigration Judge's determination that alien was not credible about wife's forced abortion, as evidenced by an abortion certificate, where the Country Report indicated that abortion certificates are provided only where the abortion is voluntary).

Immigration Judges must consider whether seeming inconsistencies are the result of translation errors or misunderstandings which might be explained by word choices expressing the same concept. *See Giday v. Gonzales*, 434 F.3d 543, 553 and n.4 (7th Cir. 2006) (noting that an incomplete transcript "abounds with grammatical errors and awkward word choice").

An adverse credibility finding based upon a significant error of fact "constitutes the kind of 'extraordinary circumstances' under which a credibility determination should be overturned." *See Ssali v. Gonzales*, 424 F.3d 556, 563 (7th Cir. 2005) (finding Board's error in stating that alien lived in eastern Uganda in discrediting his testimony that alien belonged to the Democratic Party, which was primarily composed of members from southern Uganda or who were Catholic, to be "very significant"). *See also Ahmad v. INS*, 163 F.3d 457, 461 (7th Cir. 1999).

"When an immigration judge finds an alien's testimony incredible, the alien carries the burden of explaining any discrepancies or introducing credible corroborating evidence." *Boyanivskyy v. Gonzales*, 450 F.3d 286, 293 (7th Cir. 2006), *citing Capric v. Ashcroft*, 355 F.3d 1075, 1086 (7th Cir. 2004). *See also Fedosseva v. Gonzales*, 492 F.3d 840 (7th Cir. July 5, 2007); *Balogun v. Ashcroft*, 374 F.3d 492, 500 (7th Cir. 2004) ("[w]ithout such an explanation or corroboration . . . the applicant cannot meet his [or her] burden of proof and his [or her] asylum claim will fail").

Where an Immigration Judge finds an alien credible and the case is later reopened for a new hearing based upon a change in law affecting the alien's asylum eligibility, a subsequent Immigration Judge errs in making a new, and adverse, credibility finding based upon the same facts of record, which had not changed in the intervening years. *See Junshao Zhang v. Gonzales*, 434 F.3d 993, 998 (7th Cir. 2006) (finding that remand was for purpose of updating the record in case where the alien was

denied asylum under *Matter of Chang*, 20 I&N Dec. 38 (BIA 1989), but later reopened after the 1996 amendment of the definition of a refugee to include coercive family planning claims).

B. Asylum Application

“Initial asylum applications should not always be considered completely reliable, particularly when filled out without the assistance of counsel.” *Wang v. Keisler*, 505 F.3d 615, 621 (7th Cir. 2007), quoting *Chen v. Gonzales*, 420 F.3d 707, 710 (7th Cir. 2005) (itself citing *Pop v. INS*, 270 F.3d 527, 532 (7th Cir. 2001)).

C. Asylum Officer Interview

NO CASES LISTED

D. Conjecture and Speculation

An Immigration Judge’s conjecture and speculation, unsupported by the record, will not suffice for an adverse credibility finding. See *Jiang v. Gonzales*, 485 F.3d 992, 994 - 97 (7th Cir. 2007); *Mema v. Gonzales*, 474 F.3d 412, 419 (7th Cir. 2007); *San Kai Kwok v. Gonzales*, 455 F.3d 766, 770 (7th Cir. 2006); *Guo H. Huang v. Gonzales*, 453 F.3d 942, 945 (7th Cir. 2006); *Tabaku v. Gonzales*, 425 F.3d 417, 421 (7th Cir. 2005). See also *Xia J. Lin v. Ashcroft*, 385 F.3d 748, 755-56 (7th Cir. 2004) (an Immigration Judge’s unsupported skepticism regarding a part of the alien’s claim does not support an adverse credibility finding). See also *Castilho de Oliveira v. Holder*, 564 F.3d 892, 896 (7th Cir. 2009) (overturning an IJ’s finding of implausibility where “his explanation suggests that he strained to find difficulties with [the respondent’s] testimony while ignoring evidence that corroborated it.”)

Speculation regarding what an authoritarian government will do, where such views are not supported by documentary evidence of country conditions is reversible error because an Immigration Judge’s views are not a substitute for evidence. See *Banks v. Gonzales*, 453 F.3d 449, 453-54 (7th Cir. 2006). See also *Kllokoqi v. Gonzales*, 439 F.3d 336, 344 (7th Cir. 2005); *Shtaro v. Gonzales*, 435 F.3d 711, 715 (7th Cir. 2006); *Xie Ping Huang v. Gonzales*, 403 F.3d 945, 949-51 (7th Cir. 2005); *Uwase v. Ashcroft*, 349 F.3d 1039, 1042 (7th Cir. 2003).

An Immigration Judge’s rejection of the alien’s corroborating documents (arrest warrant and summons) due to grammatical errors and misspellings in the French language documents was error where there was nothing in the record to show that the Immigration Judge was qualified to interpret French documents; it was possible that Guinean officials could make mistakes when typing documents, and the Immigration Judge’s analysis of the problems with the documents was based upon speculation. See *Diallo v. Gonzales*, 439 F.3d 764, 766-67 (7th Cir. 2006).

E. Credibility v. Plausibility

Reliance on the implausibility of respondent and his wife’s failure to flee when told by family planning authorities the exact day that she would be forcibly aborted, and the IJ’s discounting of respondent’s explanation that they planned to flee later that same day, was found reasonable by the Court, finding that it “simply does not make sense that petitioners would wait to flee the area until the day of the scheduled abortion.” *Wang v. Keisler*, 505 F.3d 615, 621 (7th Cir. 2007).

The IJ should consider the evidence as it most plausibly fits together as a whole. *See Adekpe v. Gonzales*, 480 F.3d 525, 533 (7th Cir. 2007) (noting that the IJ should have considered the bolstering effect of letters written by the alien’s family members even though the letters did not corroborate specific details of the alien’s testimony, the letters could have made the alien’s story more plausible at 532-33).

The IJ’s finding that it was implausible the government might persecute the alien because the alien was able to leave the country, was flawed because the IJ did not consider that the alien obtained a passport through bribery. *See Tandia v. Gonzales*, 487 F.3d 1048, 1052-53 (7th Cir. 2007). *See also Tadesse v. Gonzales*, 492 F.3d 905, 910 (7th Cir. 2007).

F. Demeanor

NO CASES LISTED

G. Embellishment

Where the respondent testified to events not contained in his written asylum application, the court determined that the Immigration Judge could conclude that such testimony was an attempt to embellish the asylum claim. *Hassan v. Holder*, 571 F.3d 631, 639 (7th Cir. 2009) (REAL ID Act case). *See also Toure v. Holder*, 642 F.3d 422, 429 (7th Cir. 2010) (testifying to facts on cross examination before the immigration judge that had never previously been mentioned over 3 years and 2 asylum applications); *Xiao v. Mukasey*, 547 F.3d 712, 717 (7th Cir. 2008).

H. Inconsistent Statements

If the IJ finds the alien’s testimony to be incredible, then a convincing explanation of the discrepancies or extrinsic-and credible-corroborating evidence is required. *Aung v. Gonzales*, 495 F. 3d 742, 746 (7th Cir. 2007); *Sina v. Gonzales*, 476 F.3d 459 (7th Cir. 2007); *Korniejew v. Ashcroft*, 371 F. 3d 377, 382-83 (7th Cir. 2004), *citing Capric v. Ashcroft*, 355 F. 3d 1075, 1086 (7th Cir. 2004).

“Inconsistencies that do not relate to the basis of the applicant’s alleged fear of persecution are less probative than inconsistencies that do.” *See Balogun v. Ashcroft*, 374 F.3d 492, 504 (7th Cir. 2004).

“[M]ultiple misrepresentations to Agency officials can serve as *a factor* in the credibility calculus. *See Balogun v. Ashcroft*, 374 F.3d 492, 504 (7th Cir. 2004) (emphasis in original).

“[L]ying in a sworn statement is not irrelevant to credibility.” *See Balogun v. Ashcroft*, 374 F.3d 492, 504 (7th Cir. 2004).

An Immigration Judge is not required to accept an alien’s explanations for inconsistent statements. *See Balogun v. Ashcroft*, 374 F.3d 492, 504 (7th Cir. 2004).

1. Substantial Inconsistencies

Inconsistencies concerning when and whether an alien knew the purpose of his work and the dates of his trips for RUF rebel group were considered going to the heart of his claim, persecution based on his being pressed into service by the RUF. *See Sankoh v. Mukasey*, 539 F.3d 456, 470-71 (7th Cir. 2008)

A single, significant discrepancy (here, the failure to mention a force abortion in a CPC claim) may be enough to find an alien not credible. *Xiao v. Mukasey*, 547 F.3d 712, 717 (7th Cir. 2008).

“Significant discrepancies among different versions of an alien's statement are generally a permissible basis for an adverse credibility decision.” *Wang v. Keisler*, 505 F.3d 615, 621 (7th Cir. 2007), *quoting Chen v. Gonzales*, 420 F.3d 707, 710 (7th Cir. 2005) (itself citing *Capric v. Ashcroft*, 355 F.3d 1075, 1089-90 (7th Cir. 2004)). *See also Toure v. Holder*, 642 F.3d 422, 429 (7th Cir. 2010).

Nothing more was required to support an adverse credibility finding where the discrepancies went to the heart of his claim and, without any real explanation for the change, the alien told one story when filing his asylum application and another at his hearing 4 years later. *Singh v. Gonzales*, 487 F.3d 1056, 1060 (7th Cir. 2007).

A substantial inconsistency between an alien’s testimony and documentary evidence can support an adverse credibility finding. *See Guo H. Huang v. Gonzales*, 453 F.3d 942, 947 (7th Cir. 2006) (finding that State Department Profile information about Chinese abortion certificates contradicted alien’s testimony that certificate was provided for a forced abortion).

2. Minor Inconsistencies

An adverse credibility finding cannot be supported by “trivial details or easily explained discrepancies” because such inconsistencies are not a legitimate nexus to the alien’s claim. *See San Kai Kwok v. Gonzales*, 455 F.3d 766, 769 (7th Cir. 2006), *quoting Korniejew v. Ashcroft*, 371 F.3d 377, 387 (7th Cir. 2004).

NOTE: The Court found some inconsistencies to be “more substantial” but still insufficient to support an adverse credibility finding. *See Adekpe v. Gonzales*, 480 F.3d 525, 530-31 (7th Cir. 2007); *San Kai Kwok v. Gonzales*, 455 F.3d 766, 770 (7th Cir. 2006).

Insignificant or minor inconsistencies which are reasonably explained do not support an adverse credibility finding. *See Yuan Rong Chen v. Gonzales*, 457 F.3d 670, 673 (7th Cir. 2006); *Shtaro v. Gonzales*, 435 F.3d 711, 716 (7th Cir. 2006). *See also Georgis v. Ashcroft*, 328 F.3d 962, 968 (7th Cir. 2003) (finding that inconsistencies regarding chronology of events did not support adverse credibility finding where alien could not calculate dates according to Western calendar); *Jinlong Chen v. Gonzales*, 420 F.3d 707, 709-11 (7th Cir. 2005) (discussing why Immigration Judge’s adverse credibility findings were based upon irrelevant facts).

Irrelevant facts and evidence will not support an adverse credibility finding. *See San Kai Kwok v. Gonzales*, 455 F.3d 766, 770-71 (7th Cir. 2006) (stating that the facts regarding the child bearing histories of a Chinese asylum applicant are not relevant to the applicant’s claim for asylum); *Rodriguez Galicia v. Gonzales*, 422 F.3d 529, 537 (7th Cir. 2005). *See also Giday v. Gonzales*, 434 F.3d 543, 552 (7th Cir. 2006) (finding that inconsistency regarding whether alien was detained and abused for 2 weeks or 3 weeks easily explained, plus was irrelevant as Board would not grant asylum for a 3-week detention but deny for a 2-week detention based upon the same facts).

Discrepancies concerning an alien’s motivations behind a decision to join the Honduran army were considered immaterial to his claim of persecution while in the military. *See Torres v. Mukasey*, 551 F.3d 616, 628 (7th Cir. 2008)

I. Lack of Specific and Detailed Testimony

“A lack of detail is a ‘major clue’ that someone is lying,” *Lin v. Holder*, 630 F.3d 536, 543 (7th Cir. 2010) (*citing Mitondo v. Mukasey*, 523 F.3d 784, 788-89 (7th Cir. 2008)).

An Immigration Judge’s finding that the alien’s testimony was vague and confusing and therefore did not meet the alien’s burden of proof was not an adverse credibility finding. *See Diallo v. Gonzales*, 439 F.3d 764, 766 (7th Cir. 2006). *See also Nakibuka v. Gonzales*, 421 F.3d 473, 478-79 (7th Cir. 2005) (finding that Immigration Judge’s statements that parts of the alien’s testimony were vague and confusing and possibly an exaggeration was not an adverse credibility finding as an Immigration Judge’s doubts cannot constitute an adverse credibility finding absent an explicit credibility determination).

An Immigration Judge’s finding that an alien’s testimony was too weak to establish a credible or plausible claim for asylum will not support an adverse credibility finding. *See Guo H. Huang v. Gonzales*, 453 F.3d 942, 945 (7th Cir. 2006).

BUT SEE: In *Balogun v. Ashcroft*, 374 F.3d 492, 501-02 (7th Cir. 2004), the Court stated that a credible alien might be required to submit corroborating evidence, before observing that the Seventh Circuit had not yet decided the issue in a “definitive way.” As seen from the citations in the corroborating evidence/if testimony credible section *infra*, the Court has

apparently limited this to requiring corroborating evidence from a credible alien only in cases where the alien's testimony is not sufficiently detailed, specific, or convincing.

J. Omissions

It is reasonable to expect an asylum applicant to include a particularly invasive event (i.e. a fight with family planning officials outside the room in which his wife was undergoing a forced abortion) when asked to describe mistreatment. *Wang v. Keisler*, 505 F.3d 615, 621 (7th Cir. 2007). *See also Capric v. Ashcroft*, 355 F.3d 1075, 1090 (7th Cir. 2004); *Korniejew v. Ashcroft*, 371 F.3d 377, 384 (7th Cir. 2004) (failing to mention that husband was arrested and killed for political reasons).

The Court noted that an alien's asylum application can be more generalized than his or her testimony without affecting the alien's credibility. *See Yuan Rong Chen v. Gonzales*, 457 F.3d 670, 673 (7th Cir. 2006) (observing that the alien testified that the paralegal who completed the asylum application told the alien that it did not need to be detailed before finding that the Court did not need to address the Immigration Judge's adverse credibility finding where the alien's claim did not rise to the level of persecution).

The adverse credibility finding was not upheld based on major omissions as the Immigration Judge failed to consider the alien's explanations for omissions, that they were humiliating events that he did not want to share with the preparer of his application. *See Torres v. Mukasey*, 551 F.3d 616 (7th Cir. 2008). But note this case involved other errors of the Immigration Judge, as well as Immigration Judge misconduct; the omissions would have arguably been the only support for the adverse credibility finding here.

K. Opportunity to Explain

An Immigration Judge is not required to accept an alien's explanations for inconsistent statements. *See Balogun v. Ashcroft*, 374 F.3d 492, 504 (7th Cir. 2004).

An Immigration Judge's rejection of an alien's explanations for inconsistencies will not be upheld if a reasonable fact finder would have been compelled to accept the explanation. *See Yuan Rong Chen v. Gonzales*, 457 F.3d 670, 673 (7th Cir. 2006) (finding Immigration Judge's adverse credibility finding regarding omissions from alien's asylum application involved minor inconsistencies which were reasonably explained but upholding denial of asylum because alien's credible claim did not rise to the level of persecution). *See also Xiu Ping Huang v. Gonzales*, 403 F.3d 945, 948–50 (7th Cir. 2005) (finding Immigration Judge's questioning of alien too aggressive and beyond that of impartial non-adversarial adjudicator and stating that Immigration Judge erred in refusing to allow alien to explain inconsistencies).

1. Explanation Required

An Immigration Judge must provide the alien with an opportunity to explain any inconsistencies. *See Shtaro v. Gonzales*, 435 F.3d 711, 716 (7th Cir. 2006) (finding that the

Immigration Judge erred by not attempting to “ascertain whether [the inconsistencies] could be accounted for”).

2. Explanation not Required

Where the inconsistencies were “fairly ‘obvious’ and material,” the court “steered clear” of the Second Circuit approach requiring an opportunity to explain prior to relying on an inconsistency to find an alien not credible. The court “declined” to adopt such a rule. *Sankoh v. Mukasey*, 539 F.3d 456, 469-70 (7th Cir. 2008), discussing *Ming Shi Xue v. BIA*, 439 F.3d 111 (2d Cir. 2005). But see cases cited above for seemingly opposite proposition.

L. REAL ID Act

The Court found that the REAL ID Act “abrogates decisions that focus on ‘whether an inconsistency, inaccuracy or falsehood goes to the heart of the applicant’s claim.’” *Mitondo v. Mukasey*, 523 F. 3d 784, 787-88 (7th Cir. 2008). *See also Krishnapillai v. Holder*, 563 F.3d 606, 616-17 (7th Cir. 2009); *Eke v. Mukasey*, 512 F. 3d 372, 381 (7th Cir. 2008). However, an Immigration Judge may not rely on inconsistencies “that are completely trivial...or that result from a misunderstanding or mischaracterization of the of the applicant’s testimony.” *Hassan v. Holder*, 571 F.3d 631, 637 (7th Cir. 2009).

The Court noted that under the REAL ID Act, as it applies to final administrative decisions rendered before, on, or after May 11, 2005, the Court cannot reverse an Immigration Judge’s or the Board’s determination regarding the availability of corroborating evidence unless a reasonable fact finder would be compelled to conclude that the corroborating evidence is unavailable. *See Ikama-Obambi v. Gonzales*, 470 F.3d 720, 724 (7th Cir. 2006); *Tapiero de Orejuela v. Gonzales*, 423 F.3d 666, 671 (7th Cir. 2005); *Rodriguez Galicia v. Gonzales*, 422 F.3d 529, 536 n. 5 (7th Cir. 2005); *Fessehaye v. Gonzales*, 414 F.3d 746, 752-53 (7th Cir. 2005).

After noting that differences between federal courts of appeal regarding whether and when an asylum applicant must provide corroborating evidence will be rendered moot due to the REAL ID Act, the Court observed that “[w]hen the time comes and we have fully briefed case before us, we can decide how much difference, as a practical matter, the REAL ID Act has made” and noting that the change may be “less than meets the eye.” *See Dawoud v. Gonzales*, 424 F.3d 608, 613 (7th Cir. 2005).

The Court has held that the addition of the corroborating evidence provision by the REAL ID Act means that an Immigration Judge’s “determination that if there was evidence to corroborate the alien’s testimony the alien could and should have presented it is entitled to reasonable deference. The precondition to deference is that the immigration judge explain (unless it is obvious) why he [or she] thinks corroborating evidence, if it existed, would have been available to the alien. [citations omitted] . . . To be entitled to deference, a determination of availability must rest on more than implausible assertion backed up by no facts.” *See Junshao Zhang v. Gonzales*, 434 F.3d 993, 998-99 (7th Cir. 2006), quoting *Hor v. Gonzales*, 421 F.3d 497, 500-01 (7th Cir. 2005). *See also*

Krishnapillai v. Holder, 563 F.3d 606, 618 (7th Cir. 2009) (citing *Raphael v. Mukasey*, 533 F.3d 521, 527 (7th Cir. 2008)).

The Court lacks jurisdiction over the issue of whether an asylum application was timely filed, “even as qualified by the REAL ID Act,” as a determination regarding when an alien filed his or her asylum application, is a factual determination. *See Sokolov v. Gonzales*, 442 F.3d 566, 569 (7th Cir. 2006), citing *Vasile v. Gonzales*, 417 F.3d 766, 68 (7th Cir. 2005).

The Court does have jurisdiction over constitutional claims, including constitutional claims involving whether an asylum application was timely filed. *See Mabasa v. Gonzales*, 440 F.3d 902, 906 (7th Cir. 2006) (finding it had jurisdiction over aliens’ claim of due process violation where aliens argued that the Board erred in finding that no extraordinary circumstances excepted their asylum application from the 1-year filing deadline when the aliens were claiming that changed circumstances excepted them, which error the Court found to be “careless”), *amended and superseded by* 455 F.3d 740 (2006).

M. Responsiveness to Questions

NO CASES LISTED

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

“Under the REAL ID Act, if the fact-finder determines that an applicant should provide corroborating evidence, corroborating evidence is required unless the applicant cannot reasonably obtain that evidence. Moreover, under the REAL ID Act, corroborating evidence may be required even if the applicant is credible.” However, “it also provides that “[t]he testimony of the applicant may be sufficient without corroboration, but only if the applicant's testimony is credible, is persuasive and refers to specific facts.”” *Raphael v. Mukasey*, 533 F.3d 521, 527-28 (7th Cir. 2008). *See also Krishnapillai v. Holder*, 563 F.3d 606, 618 (7th Cir. 2009).

The Immigration Judge’s failure to warn the applicant of the need for corroborative evidence of her identity before issuing an adverse ruling did not violate alien's due process rights in asylum proceedings; the REAL ID Act clearly indicated that corroborative evidence could be required, which placed alien on notice of the consequences for failing to provide corroborative evidence. *Raphael v. Mukasey*, 533 F.3d 521, 530 (7th Cir. 2008) (However, the court noted that this issue was not raised before the Board, and had it been raised, the Board could have remanded the proceedings. Also as the alien continued to maintain that she could not have obtained any corroborating evidence, the Immigration Judge’s failure to warn her was not prejudicial.).

Before an IJ may deny a claim for lack of corroboration, the IJ must (1) make an explicit credibility finding; (2) explain why it is reasonable to expect additional corroboration; and (3) explain why the alien's explanation for not producing that corroboration is inadequate. *Tandia v. Gonzales*, 487 F.3d 1048, 1054-55 (7th Cir. May 23, 2007), citing *Ikama-Obambi v. Gonzales*, 470 F.3d 720, 725 (7th Cir. 2006).

Corroboration may be at issue when an Immigration Judge has 1) determined that an alien's testimony, standing alone, is credible; 2) not yet determined whether an alien is credible; and 3) determined that an alien is not credible. See *Balogun v. Ashcroft*, 374 F.3d 492, 501-02 (7th Cir. 2004).

"[T]he corroboration requirement should be employed reasonably." See *Balogun v. Ashcroft*, 374 F.3d 492, 502-03 (7th Cir. 2004) (advising that an Immigration Judge should "take to heart" the Board's holding in *Matter of S-M-J-*, 21 I&N Dec. 722, 725-26 (BIA 1997) (en banc) that "corroboration should be required only as to material facts" and only when the corroborative evidence is reasonably accessible").

An Immigration Judge must render a credibility finding, state why corroborating evidence was reasonably expected, and indicate why the alien's reason for not providing such evidence was insufficient before the Immigration Judge can use the alien's failure to present corroborating evidence as support for the denial of the alien's asylum claim. See *San Kai Kwok v. Gonzales*, 455 F.3d 766, 771 (7th Cir. 2006). See also *Diallo v. Gonzales*, 439 F.3d 764, 765-66 (7th Cir. 2006); *Gontcharova v. Ashcroft*, 384 F.3d 873, 877 (7th Cir. 2004). BUT NOTE: The court, in *Raphael v. Mukasey*, 533 F.3d 521 (7th Cir. 2008), stated that the three-part test in *Gontcharova* no longer controls after the REAL ID Act.

An Immigration Judge may not require an alien to provide corroborating evidence which is irrelevant. See *San Kai Kwok v. Gonzales*, 455 F.3d 766, 771 (7th Cir. 2006); *Rodriguez Galicia v. Gonzales*, 422 F.3d 529, 537 (7th Cir. 2005); *Xie Ping Huang v. Gonzales*, 403 F.3d 945, 951 (7th Cir. 2005).

An Immigration Judge's rejection of the alien's corroborating documents (arrest warrant and summons) due to grammatical errors and misspellings in the French language documents was error where there was nothing in the record to show that the Immigration Judge was qualified to interpret French document, it was possible that Guinean officials could make mistakes when typing documents, and the Immigration Judge's analysis of the problems with the documents was based upon speculation. See *Diallo v. Gonzales*, 439 F.3d 764, 766-67 (7th Cir. 2006).

"An immigration judge may not simply ignore record evidence that favors the applicant's case." *Diallo v. Ashcroft*, 381 F.3d 687, 695 (7th Cir. 2004). See also *Tadesse v. Gonzales*, 492 F.3d 905, 910 (7th Cir. 2007); *Vujisic v. INS*, 224 F.3d 578, 581 (7th Cir. 2000) (immigration judge and BIA erred by ignoring evidence of feared persecution and current conditions in applicant's native country). However, the IJ may give corroborative evidence limited weight in light of other evidence of record. *Lin v. Holder*, 630 F.3d 536 (7th Cir. 2010) (alien's testimony about wife's abortion and

sterilization procedures lacked detail, and documents offered to corroborate such procedures failed to establish they were forcibly performed).

The missing witness rule of traditional civil litigation, “which provides that ‘when a party can call a witness to shed light on an event, but chooses not to, an inference arises that the witness’ testimony, if produced, would be unfavorable’” is not appropriate in civil immigration proceedings because such proceedings do not employ the classic adversary system where each party is exclusively responsible for presenting its own case. *See Tabaku v. Gonzales*, 425 F.3d 417, 421-22 (7th Cir. 2005), quoting *Multi-Ad Services, Inc. v. NLRB*, 255 F.3d 363, 371 n. 1 (7th Cir. 2001).

A finding that the news articles presented by an alien contained admittedly contradictory information about the circumstances of the alien’s cousin’s murder, but did not contradict his testimony that his cousin was murdered, will not alone support an adverse credibility finding. *See Tabaku v. Gonzales*, 425 F.3d 417, 423 (7th Cir. 2005).

Neither case law nor the regulations require an alien to meet his or her burden of proof by providing corroborating evidence in the form of a second medical opinion, from a medical practitioner in the United States (verifying that the alien was sterilized), where the regulations allow for an alien’s credible testimony alone to be sufficient. *See Jiang v. Gonzales*, 485 F.3d 992, 994 - 97 (7th Cir. 2007); *Mema v. Gonzales*, 474 F.3d 412, 419 (7th Cir. 2007).

1. If Testimony is Credible

“[U]nder the REAL ID Act, corroborating evidence may be required even if the applicant is credible.” *Raphael v. Mukasey*, 533 F.3d 521, 527-28 (7th Cir. 2008). But “[t]he testimony of the applicant may be sufficient without corroboration, but only if the applicant’s testimony is credible, is persuasive and refers to specific facts.” *Id.*

Corroborating evidence is not required if an alien’s testimony is credible. *See Xia J. Lin v. Ashcroft*, 385 F.3d 748, 756-57 (7th Cir. 2004) (implicitly finding that Immigration Judge erred by not discussing corroborating evidence which was submitted and alien’s explanations for why additional evidence could not be obtained); *Dawoud v. Gonzales*, 424 F.3d 608, 612 (7th Cir. 2005) (noting its concern over the Board’s corroboration rule); *Uwase v. Ashcroft*, 349 F.3d 1039, 1041 (7th Cir. 2003); *Georgis v. Ashcroft*, 329 F.3d 962, 969 (7th Cir. 2003).

BUT SEE: In *Balogun v. Ashcroft*, 374 F.3d 492, 501-02 (7th Cir. 2004), the Court stated that a credible alien might be required to submit corroborating evidence, citing the Board’s decision in *Matter of S-M-J-*, 21 I&N Dec. 722, 725-26 (BIA 1997) (en banc). The Court also noted that the Ninth Circuit had come to a different conclusion in *Ladha v. INS*, 215 F.3d 889, 901 (9th Cir. 2000) before observing that the Seventh Circuit had not yet decided the issue in a “definitive way.” As seen from the above citations, the Court has apparently limited this to requiring corroborating evidence from a credible alien only in cases where the alien’s testimony is not sufficiently detailed, specific, or convincing. *See also Bejko v. Gonzales*, 468 F.3d 482, 486-87

(7th Cir. 2006) (noting that the IJ was not compelled to find past persecution and a well-founded fear of persecution when the alien did not provide corroborative evidence of a threat).

A credible alien's claim cannot be rejected solely for failure to present corroborating evidence. See *Kllokoqi v. Gonzales*, 439 F.3d 336, 343 (7th Cir. 2005); *Durgac v. Gonzales*, 430 F.3d 849, 853 (7th Cir. 2005); *Dawoud v. Gonzales*, 424 F.3d 608, 612 (7th Cir. 2005); *Yahong Zheng v. Gonzales*, 409 F.3d 804, 810 (7th Cir. 2005); *Xia J. Lin v. Ashcroft*, 385 F.3d 748, 756 (7th Cir. 2004); *Diallo v. Ashcroft*, 381 F.3d 687, 695 (7th Cir. 2004); *Ememe v. Ashcroft*, 358 F.3d 446, 453 (7th Cir. 2004); *Capric v. Ashcroft*, 355 F.3d 1075, 1085 (7th Cir. 2004); *Uwase v. Ashcroft*, 349 F.3d 1039, 1045 (7th Cir. 2003).

A credible alien's claim cannot be rejected solely for failure to present corroborating evidence so long as the alien's claim is specific, detailed, and convincing. See *Dawoud v. Gonzales*, 424 F.3d 608, 612 (7th Cir. 2005), citing *Ahmed v. Ashcroft*, 348 F.3d 611, 618 (7th Cir. 2003), and *Carvajal-Munoz v. INS*, 743 F.2d 562, 574 (7th Cir. 1984).

2. If Testimony is not Credible

Corroboration is "generally not required to meet [the alien's] burden of proof unless the [Immigration Judge] finds the testimony not credible without it." *Musollari v. Mukasey*, 545 F.3d 505, 509 (7th Cir. 2008), citing *Capric*, 355 F.3d 1075, 1085-86 & n.4 (7th Cir. 2004). Moreover, "[o]nce [an alien's] credibility was called into question, the IJ was entitled to consider the lack of corroboration for other aspects of his testimony." *Musollari v. Mukasey*, 545 F.3d 505, 511 (7th Cir. 2008), citing *Capric*, 355 F.3d 1075, 1085 (7th Cir. 2004).

If the IJ finds the alien's testimony to be incredible, then a convincing explanation of the discrepancies or extrinsic-and credible-corroborating evidence is required. See *Aung v. Gonzales*, 495 F.3d 742, 746 (7th Cir. 2007); *Sina v. Gonzales*, 476 F.3d 459 (7th Cir. 2007); *Korniejew v. Ashcroft*, 371 F.3d 377, 382-83 (7th Cir. 2004), citing *Capric v. Ashcroft*, 355 F.3d 1075, 1086 (7th Cir. 2004).

"[W]hen the [Immigration Judge] does not believe the applicant or does not know what to believe, the applicant's failure to corroborate his [or her] testimony can be fatal to his [or her] claims for relief." *Nigussie v. Ashcroft*, 383 F.3d 531, 537-38 (7th Cir. 2004), quoting *Zaidi v. Ashcroft*, 377 F.3d 678, 682 (7th Cir. 2004). See also *Krishnapillai v. Holder*, 563 F.3d 606, 619 (7th Cir. 2009); *Soumare v. Mukasey*, 525 F.3d 547, 553 (7th Cir. 2008); *Eke v. Mukasey*, 512 F.3d 372, 381 (7th Cir. 2008); *Hussain v. Gonzales*, 424 F.3d 622, 629-30 (7th Cir. 2005) (implicitly agreeing with the Immigration Judge that corroborating evidence was required as the Immigration Judge identified what evidence was reasonable to expect the alien to provide in support of the alien's asylum claim).

B. Airport Statements

“According to Seventh Circuit case law, in making a determination, an adjudicator may properly consider statements made at an airport interview as long as they are reliable. . . .In the instant case, the interviews were found to be reliable because there was a translator present and [the alien] seems to have understood the questions.” *Xiao v. Mukasey*, 547 F.3d 712, 717 (7th Cir. 2008), *citing Jamal-Daoud v. Gonzales*, 403 F.3d 918, 923 (7th Cir.2005) and *Balogun v. Ashcroft*, 374 F.3d 492, 504-05 (7th Cir.2004).

Reliance on omissions in the airport statement was upheld where the IJ found the record of the airport interview to have “many markers of probative value and reliability,” including the actual transcript of the interview, which indicated that the respondent was asked at least five times about his fear of returning to Pakistan. *Chatta v. Mukasey*, 523 F.3d 748, 752 (7th Cir. 2008).

“Airport interviews . . . are not always reliable indicators of credibility.” *Moab v. Gonzales*, 500 F.3d 656, 660 (7th Cir. 2007), *citing Dong v. Gonzales*, 421 F.3d 573, 579 (7th Cir. 2005) (finding that alien’s airport interview supported asylum claim); *Xiu Ping Huang v. Gonzales*, 403 F.3d 945, 950 (7th Cir. 2005); *Balogun v. Ashcroft*, 374 F.3d 492, 505 (7th Cir. 2004), *relying upon Ramsameachire v. Ashcroft*, 357 F.3d 169 (2d Cir. 2004). *But cf Rama v. Holder*, 607 F.3d 461 (7th Cir. 2010) (upholding IJ’s reliance on discrepancies between airport statement and I-589, along with discrepancies between testimony and other documents submitted, to support adverse credibility finding without further discussion of reliability of airport statement).

“Reliability concerns not only the accuracy and validity of the documents on which airport interviews are recorded, but also the applicant’s frame of mind and ability to answer the interviewer’s questions. *See Balogun v. Ashcroft*, 374 F.3d 492, 504 (7th Cir. 2004), *citing Ramsameachire v. Ashcroft*, 357 F.3d 169 (2d Cir. 2004).

Airport interview statements do not support an adverse credibility finding where the airport statements did not involve questions regarding whether the alien was afraid of returning to home country or wanted to apply for asylum. *See Xiu Ping Huang v. Gonzales*, 403 F.3d 945, 950 (7th Cir. 2005).

An adverse credibility finding may rely upon an airport statement where that statement has indicia of reliability. *See Xiu Ping Huang v. Gonzales*, 403 F.3d 945, 950 (7th Cir. 2005) (finding airport statement supported Immigration Judge’s adverse credibility determination and contrasting case before it with the facts in *Balogun v. Ashcroft*, 374 F.3d 492 (7th Cir. 2004). *See also Jamal-Daoud v. Gonzales*, 403 F.3d 918, 923-24 (7th Cir. 2005) (upholding Immigration Judge’s use of airport statement as part of adverse credibility finding).

Factors to be considered when evaluating the reliability of an airport statement, although not required in every case, include: 1) does the statement summarize or paraphrase the alien’s responses rather than present a verbatim recitation or transcript of interview, as summarized or paraphrased statements are less reliable; 2) are the questions asked of the alien designed to elicit information or details of an asylum claim or were the appropriate follow-up questions asked which might have solicited information about an asylum claim, as questions which do not do the above are less reliable;

3) are there any indications that the alien was reluctant to provide information, including reluctance due to events in the alien's home country, such as prior interrogation sessions or other coercive experiences in alien's home country; and 4) do the alien's answers on the statement suggest that he or she does not understand English, or the translation provided by the interpreter. *See Moab v. Gonzales*, 500 F. 3d 656, 661 (7th Cir. 2007); *Xiu Ping Huang v. Gonzales*, 403 F.3d 945, 950 (7th Cir. 2005), *citing Balogun v. Ashcroft*, 374 F.3d 492, 505 (7th Cir. 2004). Reliability is also affected where, lacking a transcript of the airport statement or credible fear interview, it is unclear what, if any, follow-up questions were asked during the course of the interview. *See Moab v. Gonzales*, 500 F. 3d 656, 661 (7th Cir. 2007).

It is error to for an adverse credibility finding to be based upon airport (or other) statements made through an interpreter who was not using the alien's preferred language in which he or she is more comfortable. *See Xia J. Lin v. Ashcroft*, 385 F.3d 748, 756 n. 1 (7th Cir. 2004), *citing Ememe v. Ashcroft*, 358 F.3d 446, 452-53 (7th Cir. 2004).

C. Authentication of Documents

NO CASES LISTED

D. Department of State Country Reports

“[U]nthinking reliance on general country conditions without linking those conditions to the applicant for asylum would undermine the individualized nature of the inquiry.” *Sankoh v. Mukasey*, 539 F.3d 456, 466 (7th Cir. 2008), *citing Kllokoqi v. Gonzales*, 439 F.3d 336, 343 (7th Cir.2005). Because “considerations of diplomacy may shade the analysis. . . denying asylum to an individual solely based on the generalized statements in the report may not afford the meaningful ‘opportunity to be heard’ required by due process.” *Sankoh v. Mukasey*, 539 F.3d 456, 466 (7th Cir. 2008). But the evidence was not controverted and concerned political conditions, and thus, was properly considered.

A “dramatic discrepancy between an asylum seeker’s testimony and the established background facts [from a country report] may form the basis of an IJ's adverse credibility finding.” *Musollari v. Mukasey*, 505 F.3d 505, 510-11 (7th Cir. 2008). The information in the country report concerned how the Democratic Party came into power in Albania.

Department of State Country Reports “are generally the best source of information on conditions in foreign nations.” *See Jiang v. Gonzales*, 485 F.3d 992, 994 - 97 (7th Cir. 2007); *Mema v. Gonzales*, 474 F.3d 412, 419 (7th Cir. 2007).

The State Department's International Religious Freedom Report’s statement that the “vast majority” of the population in the respondent’s home province of Punjab are Sunni Muslim was found to form a reasonable basis for doubting respondent’s claim that a rival Shi’a family are “all-powerful throughout the entire country,” and made it further “hard to believe that there would be no place in

Pakistan for Chatta to be safe from their influence.” *Chatta v. Mukasey*, 523 F.3d 748, 752 (7th Cir. 2008).

Generalized information from a Department of State Country Report is an insufficient basis for granting asylum. *See Yuan Rong Chen v. Gonzales*, 457 F.3d 670, 674-75 (7th Cir. 2006); *Rashiah v. Ashcroft*, 388 F.3d 1126 (7th Cir. 2004); *Selimi v. Ashcroft*, 360 F.3d 736, 740-41 (7th Cir. 2004).

The generalized information in a Department of State Country Report cannot be used to refute the alien’s testimony regarding his or her personal experience. *See Feng Dong v. Gonzales*, 421 F.3d 573, 578 (7th Cir. 2005). *See also Guo H. Huang v. Gonzales*, 453 F.3d 942, 945-47 (7th Cir. 2006) (distinguishing facts of this case from *Feng Dong v. Gonzales* where the Immigration Judge was allowed to rely on the country reports which explicitly contradicted the alien regarding issuance of abortion certificates).

Reliance on the country report concerning the issuance of abortion certificates for voluntary procedures was proper, in the absence of contradictory, credible, independent information. *See Xiao v. Mukasey*, 547 F.3d 712, 718 (7th Cir. 2008).

Use of a Department of State Country Report is appropriate as long as a particularized review of the alien’s case is undertaken. *See Gomes v. Gonzales*, 473 F.3d 746, 756 (7th Cir. 2007); *Guo H. Huang v. Gonzales*, 453 F.3d 942, 947-48 (7th Cir. 2006); *Toptchev v. INS*, 295 F.3d 714, 723 (7th Cir. 2002). *See also Mansour v. INS*, 230 F.3d 902, 908 (7th Cir. 2000) (stating that the Board’s decision should reflect its consideration and evaluation of evidence and rather than a generalized recitation which shows little thought).

Both the Immigration Judge and the Board erred by failing to discuss the Department of State Country Report in the record which provided information supporting the alien’s claim. *See Youkhana v. Gonzales*, 460 F.3d 927, 932 (7th Cir. 2006); *Mansour v. INS*, 230 F.3d 902, 907-08 (7th Cir. 2000).

NOTE: The Court also stated that nothing in its prior decision in *Margos v. Gonzales*, 433 F.3d 593, 598 (7th Cir. 2006), suggested that the Board “may not take the Country Report into account as some evidence supporting a finding of persecution.” *See Youkhana v. Gonzales*, 460 F.3d 927, 933 (7th Cir. 2006) (emphasis in original).

“Because the State Department’s country reports are so general – they may reveal which groups are at greatest risk, but not how much risk and not how the country’s forces operate day-to-day – the administrative record needs concrete, case-specific evidence.” *See Banks v. Gonzales*, 453 F.3d 449, 453 (7th Cir. 2006).

E. False Documents, including False Statements

“Inconsistencies that do not relate to the basis of the applicant's alleged fear of persecution are less probative than inconsistencies that do. . . . Nevertheless, multiple misrepresentations to Agency

officials can serve as a factor in the credibility calculus.” *Musollari v. Mukasey*, 545 F.3d 505, 511, quoting *Balogun v. Ashcroft*, 374 F.3d 492, 504 (7th Cir. 2004).

The IJ should consider the evidence as it most plausibly fits together as a whole. *See Adekpe v. Gonzales*, 480 F.3d 525, 533 (7th Cir. 2007) (noting that the IJ should have considered the bolstering effect of letters written by the alien’s family members even though the letters did not corroborate specific details of the alien’s testimony, the letters could have made the alien’s story more plausible at 532-33).

The IJ’s finding that it was implausible the government might persecute the alien because the alien was able to leave the country was flawed because the IJ did not consider that the alien obtained a passport through bribery. *See Tandia v. Gonzales*, 487 F.3d 1048, 1053-54 (7th Cir. 2007). *See also Tadesse v. Gonzales*, 492 F.3d 905, 910 (7th Cir. July 9, 2007).

Affidavits cannot be set aside the moment the oath-taker alleges that he did not understand or was not paying attention. *See Singh v. Gonzales*, 487 F.3d 1056, 1060 (7th Cir. 2007).

“We have made clear that although an [Immigration Judge] may find an applicant not credible when he [or she] uses false documents to establish an asylum claim, ‘the use of false documents to facilitate travel of gain entry does not serve to impute a lack of credibility to the petitioner.’” *See Junshao Zhang v. Gonzales*, 434 F.3d 993, 997 (7th Cir. 2006), quoting *Feng Dong v. Gonzales*, 421 F.3d 573, 577 (7th Cir. 2005).

An Immigration Judge’s rejection of the alien’s corroborating documents (arrest warrant and summons) due to grammatical errors and misspellings in the French language documents was error where there was nothing in the record to show that the Immigration Judge was qualified to interpret French documents, it was possible that Guinean officials could make mistakes when typing documents, and the Immigration Judge’s analysis of the problems with the documents was based upon speculation. *See Diallo v. Gonzales*, 439 F.3d 764, 766-67 (7th Cir. 2006).

Proof that a document is a forgery does not constitute proof that an alien is not credible absent a reason to believe that the alien knew or suspected the document to be a forgery. *See Hanaj v. Gonzales*, 446 F.3d 694, 699 (7th Cir. 2006); *Kourski v. Ashcroft*, 355 F.3d 1038, 1040 (7th Cir. 2004) (rejecting the Board’s holding in *Matter of O-D-*, 21 I&N Dec. 1079 (BIA 1998)). *See also Gjerazi v. Gonzales*, 435 F.3d 800, 809-10 (7th Cir. 2006) (finding that Immigration Judge erred in rejecting those documents that the alien testified were copies but which the Immigration Judge found to be originals).

The fact that a document is a forgery undermines an alien’s credibility only if the alien knew or suspected that the document was forged; however, the forged document does deprive the alien of “the extra boost to credibility that it would have if it were corroborated.” *See Hanaj v. Gonzales*, 446 F.3d 694, 699 (7th Cir. 2006); *Kllokoqi v. Gonzales*, 439 F.3d 336, 343 (7th Cir. 2005); *Kourski v. Ashcroft*, 355 F.3d 1038, 1040 (7th Cir. 2004).

It is error to rely upon a fraudulent document to discredit not only the asylum applicant's testimony but also the testimony of the applicant's witnesses. *See Hanaj v. Gonzales*, 446 F.3d 694, 699 (7th Cir. 2006).

An alien's testimony that he or she "gave false information to immigration authorities for fear of deportation to a persecuting country can be entirely *consistent* with a fear of persecution." *See Rodriguez Galicia v. Gonzales*, 422 F.3d 529, 537 (7th Cir. 2005) (emphasis in original).

F. New Evidence on Appeal

"Since [the alien] had been found to have lied at the hearing about both his claims, religious and population-policy persecution, he would have had to present evidence in support of reopening that was in no way dependent on his discredited credibility in order to establish a well-founded fear of persecution on the same grounds if he is returned to China." *Huang v. Mukasey*, 534 F.3d 618, 622 (7th Cir. 2008).

As the alien did not explain to the Immigration Judge, Board, or the court what new evidence should be admitted on remand, the failure to do so was "fatal" and the argument a "nonstarter." *Musollari v. Mukasey*, 505 F.3d 545, 511 (7th Cir. 2008), *citing Rehman v. Gonzales*, 441 F.3d 506, 509 (7th Cir. 2006).

At the motion to reopen stage, unless the BIA finds the alien's affidavit "inherently unbelievable," it must accept the affidavit's veracity. *Gebreeyesus v. Gonzales*, 482 F.3d 952, 955 (7th Cir. 2007).

EIGHTH CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

“Administrative findings of fact, including credibility determinations, are ‘conclusive unless any reasonable adjudicator would be compelled to find to the contrary.’” *Fesehaye v. Holder*, 607 F.3d 523, 526 (8th Cir. 2010); *Singh v. Gonzales*, 495 F.3d 553, 556 (8th Cir. 2007).

“The combination of an adverse credibility finding and a lack of corroborating evidence for the claim of persecution means that the applicant's claim fails, regardless of the reason for the alleged persecution.” *Redd v. Mukasey*, 535 F.3d 838, 842 (8th Cir. 2008), quoting *Averianova v. Mukasey*, 509 F.3d 890, 895 (8th Cir. 2007) (internal quotation omitted); *Fesehaye v. Holder*, 607 F.3d 523, 526 (8th Cir. 2010).

In a case in which the alien had been granted asylum but the government sought reopening on the basis of alleged fraud, the IJ must place the burden of proof on the government, instead of the alien. *Ntangsi v. Gonzales*, 475 F.3d 1007, 1012 (8th Cir. 2007). See *Hailemichael v. Gonzales*, 454 F.3d 878, 885 (8th Cir. 2006).

An IJ’s adverse credibility findings regarding an alien’s interclan marriage will not rebut a claim of past persecution based on FGM. See *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007).

An adverse credibility finding must be supported by specific, cogent reasons. See *Thu v. Holder*, 596 F.3d 994, 998 (8th Cir. 2010); *Sow v. Mukasey*, 546 F.3d 953, 956 (8th Cir. 2008); *Desna v. Gonzales*, 454 F.3d 896 (8th Cir. 2006); *Eta-Ndu v. Gonzales*, 411 F.3d 977, 982 (8th Cir. 2005). See also *Mocevic v. Mukasey*, 529 F.3d 814, 817 (8th Cir. 2008); *Zewdie v. Ashcroft*, 381 F.3d 804, 807 (8th Cir. 2004) (remanding the record where the Immigration Judge’s adverse credibility finding and failure to credit the alien’s corroborating evidence was not based upon an articulated, reasoned analysis). “[T]his means that an IJ making a credibility determination must ‘give reasons that are “specific” enough that a reviewing court can appreciate the reasoning behind the decision’ and cogent enough ‘that a reasonable adjudicator would not be compelled to reach the contrary conclusion.’” *Chen v. Mukasey*, 510 F.3d 797, 802 (8th Cir. 2007), quoting *Singh v. Gonzales*, 495 F.3d 553, 557-58 (8th Cir. 2007). There are no additional requirements of specificity or cogency beyond the above-stated standard. *Damkam v. Holder*, 592 F.3d 846, 851 (8th Cir. 2010) (Pre-REAL ID Act case). “Specific, cogent reasons include an applicant’s submission of fraudulent documents or contradictions between official records and the evidence submitted.” *Nadeem v. Holder*, 599 F.3d 869, 873 (8th Cir. 2010).

Where the adverse credibility finding goes to the heart of the alien’s asylum claim, such credibility determination is dispositive. See *Desna v. Gonzales*, 454 F.3d 896 (8th Cir. 2006); *Sheikh v. Gonzales*, 427 F.3d 1077, 1081 (8th Cir. 2005); *Jalloh v. Gonzales*, 423 F.3d 894, 898-99 (8th Cir.

2005); *Ismail v. Ashcroft*, 396 F.3d 970, 974 (8th Cir. 2005); *Aden v. Ashcroft*, 396 F.3d 966, 968 (8th Cir. 2005); *Sivakaran v. Ashcroft*, 368 F.3d 1028 (8th Cir. 2004).

An Immigration Judge need not find an alien's testimony to be "clearly false" before rendering an adverse credibility finding so long as the credibility determination is supported by specific and cogent reasons. *See Onsongo v. Gonzales*, 457 F.3d 849, 854 (8th Cir. 2006).

"An immigration judge can base a credibility determination on the lack of corroborating evidence if the judge also encounters inconsistencies in testimony, contradictory evidence, or inherently improbable testimony." *Esaka v. Ashcroft*, 397 F.3d 1105, 1110 (8th Cir. 2005). *See Singh v. Gonzales*, 495 F.3d 553 (8th Cir. 2007); *see generally Zine v. Mukasey*, 517 F.3d 535, 541 (8th Cir. 2008); *Hassanein v. Ashcroft*, 380 F.3d 324 (8th Cir. 2004) (upholding an adverse credibility finding based upon a variety of factors).

See Manani v. Filip, 552 F.3d 894, 901-02 (8th Cir. 2009) for court's acceptance of Immigration Judge's finding that the alien was only "partly credible" based primarily on her attempt to "perpetrate a fraud on the immigration process."

An adverse credibility finding on a claim for withholding under the Act also justified the denial of CAT protection, without separate analysis required, because the CAT claim was based entirely on the testimony provided in conjunction with the statutory claim for relief. *See Ezeagwu v. Mukasey*, 537 F.3d 836, 840 (8th Cir. 2008), *citing Alemu v. Gonzales*, 403 F.3d 572, 576 (8th Cir. 2005). *See also Bhosale v. Mukasey*, 549 F.3d 732, 736 (8th Cir. 2008). BUT SEE *Ntangsi v. Holder*, 554 F.3d 1142, 1149-50 (8th Cir. 2009) (an adverse credibility finding on asylum is not necessarily determinative of CAT claim, but an Immigration Judge can properly consider discounted credibility).

"[A] separate analysis of a CAT claim [is conducted] only when the alleged threat of torture is based on evidence not related to an applicant's asylum claim." *Sow v. Mukasey*, 546 F.3d 953, 957 (8th Cir. 2008).

B. Asylum Application

Where a first application stated that Indian authorities never arrested or mistreated the alien, and the second states that he was arrested and mistreated, the "central claim" of the second application was inconsistent with the first. Thus, substantial evidence supported the adverse credibility finding. *See Bhosale v. Mukasey*, 549 F.3d 732, 735 (8th Cir. 2008).

Where original application referenced a refugee card number and alien denied ever having a refugee card during his testimony, this was one of many discrepancies that supported adverse credibility finding. *See Sow v. Mukasey*, 546 F.3d 953 (8th Cir. 2008).

An Immigration Judge's adverse credibility finding can be supported by inconsistent statements in the alien's testimony, airport interview statement, and asylum application. *See Jalloh v. Gonzales*, 423 F.3d 894, 898-99 (8th Cir. 2005).

The Immigration Judge correctly found the alien not credible based upon omissions of key information from the alien's asylum information. *See Desna v. Gonzales*, 454 F.3d 896 (8th Cir. 2006) (finding that alien's complete omission from her asylum application that she was Jewish and the "no" response to whether she was associated with or belonged to any religious groups, supported adverse credibility finding where alien was claiming persecution because she was Jewish).

Where alien testified that he had been arrested, but his asylum application did not mention the arrest, this was one reason to support the Immigration Judge's adverse credibility finding. *See Al Milaji v. Mukasey*, 551 F.3d 768, 771-72 (8th Cir. 2008). The Immigration Judge also relied on the alien's entering and departing Syria multiple times and not seeking asylum in other countries, and not applying for asylum for three years after entering the United States.

The Court upheld an IJ's adverse credibility finding where the DHS offered credible testimony by the preparer of the I-589 that he had entirely fabricated the asylum claim (as he had done in over 100 applications), and the alien's rebuttal consisted of only his own testimony, which he "eventually admitted was riddled with misrepresentations." *Fernandes v. Holder*, 619 F.3d 1069, 1075 (9th Cir. 2010) (Pre-REAL ID Act case).

C. Asylum Officer Interview

An Immigration Judge's adverse credibility finding based upon inconsistencies between an alien's testimony, the alien's asylum application, and the asylum officer's interview notes will be upheld if supported by specific and cogent reasons. *See Aden v. Ashcroft*, 396 F.3d 966, 968-69 (8th Cir. 2005).

D. Conjecture and Speculation

"We have in the past refused to disturb IJs' findings based on assessments of plausibility, even though such assessments must ultimately depend on the fact-finder's notions of common sense and life experience [W]e have done so only where the IJ's finding was irrational or based on improper bias." *Chen v. Mukasey*, 510 F.3d 797, 802 (8th Cir. 2007).

"We see no impermissible speculation in the IJ's determination that Chen's story was implausible. A rational person could conclude that police would be more interested in arresting an active participant in a forbidden activity than in arresting an accessory, and therefore that it was implausible that the Chinese police would relentlessly pursue Chen (the driver), but decline to arrest his mother (the Falun Gong adherent). A rational person could think that if Chen were forced to hide within China and flee the country to avoid the wrath of its government, he would not present government border officials his identification with his own name and picture. A finder of fact would not be compelled to find these aspects of Chen's story plausible." *Id.*

"Speculation and conjecture are insufficient for an [IJ] to render an adverse credibility finding." *Hong Zhang Cao v. Gonzales*, 442 F.3d 657, 660-61 (8th Cir. 2006) (finding unsupportable an Immigration Judge's speculation that village officials registering the alien's marriage would not have

noticed or objected to alien's wife's pregnancy where alien stated that wife was 5 months pregnant when marriage registered). *See also Shahinaj v. Gonzales*, 481 F.3d 1027 (8th Cir. 2007) (finding an adverse credibility finding in error when it was based on the IJ's personal opinion of the alien's dress, speech and mannerisms; the alien's lack of membership in any Albanian homosexual organization; and the IJ's personal experience of similar asylum claims); *Kaur v. Ashcroft*, 379 F.3d 876, 887 (8th Cir. 2004) (adverse credibility finding was not supported where it was based on an Immigration Judge's personal conjecture about how Indian passport officials carry out their duties).

An Immigration Judge did not engage in improper speculation by finding that the burn marks on the alien's passport were "spectacularly inconsistent" with the alien's testimony that the passport was burned in a house fire where the Immigration Judge explained why he found that the passport had been tampered with and the evidence of burning on the passport did not require a forensics examiner. *See Bropleh v. Gonzales*, 428 F.3d 772, 777 (8th Cir. 2005).

The Court rejected an alien's claim that the IJ engaged in improper conjecture by basing an adverse credibility finding on the fact that a party membership card offered into evidence contained a later-affixed photo of the alien (in which a scar was visible that purportedly resulted from an incident occurring a year after the issuance of the card). *Azie v. Holder*, 602 F.3d 916, 919-920 (8th Cir. 2010).

E. Credibility v. Plausibility

"[A] fact-finder 'may base an adverse credibility finding on the implausibility of an alien's testimony, as long as' the IJ explains her reasons for disbelief." *Redd v. Mukasey*, 535 F.3d 838, 842 (8th Cir. 2008), quoting *Onsongo v. Gonzales*, 457 F.3d 849, 853 (8th Cir. 2006) (internal quotations omitted). *See also Kipkemboi v. Holder*, 587 F.3d 885, 888 (8th Cir. 2009).

Where an Immigration Judge based an adverse credibility finding on the unlikelihood that the respondent, who was purportedly incarcerated for 1 year in Burma for political activities, would be issued a passport (which contained endorsements dated during the alleged time of detention), where a State Department report in the record indicated that the Burmese government restricted travel for political opponents, was found (in conjunction with other inconsistencies) to constitute "specific, cogent reasons for disbelief." *Thu v. Holder*, 596 F.3d 994, 998-99 (8th Cir. 2010).

The Court agreed with Immigration Judge's finding of implausibility that an alien would carry around a letter ordering his own death, passing through checkpoints; court found it to seem "contrary to common sense." *Redd v. Mukasey*, 535 F.3d 838, 843 (8th Cir. 2008). Nor was the Immigration Judge's determination considered "irrational or based on improper bias." *Id.*

The implausibility of an alien's testimony can support an Immigration Judge's adverse credibility finding where the Immigration Judge provides specific and convincing reasons to support the determination. *See Mamana v. Gonzales*, 436 F.3d 966, 968 (8th Cir. 2006); *Begna v. Ashcroft*, 392

F.3d 301, 304 (8th Cir. 2004); *Rucu-Roberti v. INS*, 177 F.3d 669, 670 (8th Cir. 1999) (*per curiam*) (one basis for the adverse credibility finding was that the Immigration Judge found it implausible that guerillas would threaten the alien based on her minor political activity). *See also Damkam v. Holder*, 592 F.3d 846, 852 (8th Cir. 2010) (Pre-REAL ID Act case); *Ombongi v. Gonzales*, 417 F.3d 823, 825-26 (8th Cir. 2005).

An Immigration Judge may base an adverse credibility finding on the implausibility of an alien's testimony but must provide specific and cogent reasons for doing so. *See Onsongo v. Gonzales*, 457 F.3d 849, 853 (8th Cir. 2006).

F. Demeanor

NO CASES LISTED

G. Embellishment

NO CASES LISTED

H. Inconsistent Statements

Inconsistencies that “relate to the basis of persecution” are not minor and will support an adverse credibility finding. *See Redd v. Mukasey*, 535 F.3d 838, 842 (8th Cir. 2008) (citation omitted). Unexplained inconsistent statements as to whether an alien was flogged were considered to go to the heart of the claim.

“The mere existence of inconsistencies in the record does not preclude [an alien's] claim of persecution.” *See Hong Zhang Cao v. Gonzales*, 442 F.3d 657, 660 (8th Cir. 2006), *citing Sheikh v. Gonzales*, 427 F.3d 1077, 1080 (8th Cir. 2005). In a pre-REAL ID Act claim, the Court upheld an adverse credibility finding based on discrepancies and omissions where (1) the discrepancies and omissions were actually present; (2) they provided “specific and cogent reasons” to conclude that the testimony was incredible, and went to the heart of the claim; and (3) no convincing explanation was provided. *Litvinov v. Holder*, 605 F.3d 548 (8th Cir. 2010).

An adverse credibility finding based upon inconsistent statements on critical elements of the alien's claim is supportable. *See Fofanah v. Gonzales*, 447 F.3d 1037, 1040 (8th Cir. 2006).

An Immigration Judge can reject an alien's explanations for inconsistencies provided the Immigration Judge explains the reasons for doing so. *See Fesehaye v. Holder*, 607 F.3d 523, 527 (8th Cir. 2010); *Onsongo v. Gonzales*, 457 F.3d 849, 853 (8th Cir. 2006).

Inconsistencies with an asylum application filed in the Netherlands when the respondent was 14 years old formed a sufficient basis for an adverse credibility finding, where the respondent remained in the Netherlands until age 20, was represented by counsel there, yet did not correct what she claimed in the U.S. to be errors. *Fesehaye v. Holder*, 607 F.3d 523, 527 (8th Cir. 2010).

1. Substantial Inconsistencies

“Inconsistencies or omissions in an asylum application that relate to the basis of persecution are not minor but are at ‘the heart of the asylum claim.’” *See Esaka v. Ashcroft*, 397 F.3d 1105, 1110 (8th Cir. 2005), *quoting Kondakova v. Ashcroft*, 383 F.3d 792, 796 (8th Cir. 2004).

Substantive inconsistencies which go to the key issues of an asylum claim can support an adverse credibility finding. *See Hong Zhang Cao v. Gonzales*, 442 F.3d 657, 661 (8th Cir. 2006) (finding that alien’s testimony that wife had a forced abortion, as evidence by an abortion certificate, but which was contradicted by information in the State Department Country Report which indicated that abortion certificates were only given for voluntary abortions was a substantive inconsistency which went to the heart of the alien’s asylum claim). *See generally, Fongwo v. Gonzales*, 430 F.3d 944, 948 (8th Cir. 2005) (in upholding Immigration Judge’s denial of motion to reconsider, the Court found that the alien presented inconsistencies and fraudulent documents regarding his identity which the Immigration Judge properly analyzed).

Where alien maintained that her father was fired based on his political activity and prolonged detention, evidence that her father was still employed was found to go to the heart of her claim. *See Ntangsi v. Holder*, 554 F.3d 1142, 1147-48 (8th Cir. 2009).

The court upheld an adverse credibility finding where the alien’s claims seemed to change “with each step of the asylum process.” Although the alien stated that she did not originally mention her rape as she was ashamed, the Immigration Judge also relied on other inconsistencies that it did not consider minor (such as whether the police were wearing uniforms). The court held that the Immigration Judge was not compelled to accept testimony of sexual assault without corroboration in light of the overall credibility problems. BUT NOTE that there is a dissent in this case that set forth other cases concerning this issue. *See Clemente-Giron v. Holder*, No. 07-3895, 2009 WL 306079 (8th Cir. Feb. 10, 2009).

2. Minor Inconsistencies

Minor inconsistencies which do not go the core of the alien’s claim will not support an adverse credibility finding. *See Sheikh v. Gonzales*, 427 F.3d 1077, 1080 (8th Cir. 2005). *See also Hong Zhang Cao v. Gonzales*, 442 F.3d 657, 660 (8th Cir. 2006) (finding that date of alien’s marriage and when it was registered was not material to alien’s family planning claim since there was nothing in the record which “denies” that the alien was married).

I. Lack of Specific and Detailed Testimony

“If testimony is ‘meager, general, and not the type of specific or detailed evidence necessary to obtain asylum’ the [Immigration Judge] is within his or her discretion to deny the claim.” *See Ombongi v. Gonzales*, 417 F.3d 823, 825 (8th Cir. 2005) (finding that Immigration Judge’s adverse credibility finding was supported by the record where it was based in part upon the lack of detail and general nature of the alien’s testimony).

J. Omissions

The court found the respondent’s failure to mention (other than by a possibly an indirect, ambiguous reference) that he allegedly served as an SDF informant (which a witness mentioned as a key to the respondent’s fear) reasonably led the IJ to conclude that the respondent was not an informant, and called into question the remainder of his testimony. *Damkam v. Holder*, 592 F.3d 846, 851 (8th Cir. 2010) (Pre-REAL ID Act case).

In REAL ID Act case, an alien’s failure to mention his detentions in his written application and the fact that he “forgot” to mention this and abuse, and later confusion about the dates of detention supported a “reasonable determination that he was not credible.” *Ezeagwu v. Mukasey*, 537 F.3d 836, 839-40 (8th Cir. 2008).

“An omission alone is normally insufficient for an adverse credibility finding, but if it goes to the ‘heart of the asylum claim,’ it does raise a credibility issue.” *See Hong Zhang Cao v. Gonzales*, 442 F.3d 657, 661 (8th Cir. 2006), *citing Kondakova v. Ashcroft*, 383 F.3d 792, 796 (8th Cir. 2004) (finding that alien’s omission of the most serious facts from asylum application, which facts were unsupported by any corroborating evidence, supported Immigration Judge’s adverse credibility finding) (itself quoting *Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001)). *See also Esaka v. Ashcroft*, 397 F.3d 1105, 1110 (8th Cir. 2005) (finding alien’s omission of beating from asylum application went to the heart of the asylum claim and supported the Immigration Judge’s adverse credibility finding); *Mohamed v. Ashcroft*, 395 F.3d 835, 836-37 (8th Cir. 2005) (upholding Immigration Judge’s adverse credibility finding based upon omissions from asylum application that were crucial portions of his claim, including his mother’s murder and father’s abduction); *Zewdie v. Ashcroft*, 381 F.3d 804, 809 (8th Cir. 2004) (rejecting the Board’s and the Immigration Judge’s finding that the alien’s omission of her beatings on asylum application or mention of same to asylum officer supported an adverse credibility finding where the record revealed obvious translation problems).

K. Opportunity to Explain

The court found that although the respondents attempted to reconcile the inconsistencies cited by the Immigration Judge, the latter “was permitted to, and indeed did reject their explanations.” *Lybeshia v. Holder*, 569 F.3d 877, 881 (8th Cir. 2009).

The respondent’s attempt to explain several admitted falsehoods contained in his asylum application was properly found insufficient by the IJ in light of credible testimony by the I-589’s preparer that

he had entirely fabricated the asylum claim. *Fernandes v. Holder*, 619 F.3d 1069, 1075 (9th Cir. 2010) (Pre-REAL ID Act case).

1. Explanation Required

NO CASES LISTED

2. Explanation not Required

NO CASES LISTED

L. REAL ID Act

Citing to section 208(b)(1)(B)(iii) of the Act, 8 U.S.C. 1158(B)(1)(b)(iii), the court stated, “There is no presumption that an alien’s testimony is credible, and an IJ, considering the totality of the circumstances, may base a credibility determination on the inherent plausibility of the applicant’s account, the consistency between the applicant’s written and oral statements, and any inaccuracies or falsehoods in an applicant’s statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim.” *Ezeagwu v. Mukasey*, 537 F.3d 836, 839 (8th Cir. 2008).

The Court has the authority under the REAL ID Act to review constitutional claims and questions of law. *See Munoz-Yepes v. Gonzales*, 465 F.3d 347 (8th Cir. 2006) (finding the scope of the Supreme Court’s decision regarding section 212(c) waivers and legal meaning of “admission” to be questions of law); *Ibarra-Terrazas v. Gonzales*, 461 F.3d 1046 (8th Cir. 2006) (finding that whether an untimely appeal before the Board is governed by 8 C.F.R. §§ 103.5(a)(3), 1103.3 was a question of law); *Ignatova v. Gonzales*, 430 F.3d 1209 (8th Cir. 2006) (finding that issue of whether extraordinary circumstances prevented the timely filing of an asylum application is a discretionary determination, not a question of law, and thus not within the Court’s jurisdiction). *See also Ming Ming Wijono v. Gonzales*, 439 F.3d 868, 871-72 (8th Cir. 2006) (court has no jurisdiction over waiver of 1-year filing requirement); *Salkeld v. Gonzales*, 420 F.3d 804, 809 (8th Cir. 2005) (court has jurisdiction over constitutional claims and questions of law)..

M. Responsiveness to Questions

An alien’s claim that she was unable to properly respond to questions due to mental impairment, and that the IJ violated her due process rights by failing to continue the hearing to allow her to review the testimony with counsel to determine what question were misunderstood, was rejected where such claim was not raised during the pendency of proceedings before the IJ (which included a 6 month continuance). *Azie v. Holder*, 602 F.3d 916, 919 (8th Cir. 2010).

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

“[T]he weaker an alien’s testimony, the greater the need for corroborating evidence.” *See Bropleh v. Gonzales*, 428 F.3d 772, 777-78 (8th Cir. 2005), quoting *Mohamed v. Ashcroft*, 396 F.3d 999, 1005 (8th Cir. 2005) (per curiam) (itself quoting *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998)).

“Although an alien need not always corroborate his [or her] testimony, it must bear some degree of reliability beyond skeletal secondhand information.” *See Melecio-Saquil v. Ashcroft*, 337 F.3d 983, 987 (8th Cir. 2003).

The lack of corroborating evidence does not mean that an alien is not credible, but. *See Ombongi v. Gonzales*, 417 F.3d 823, 826 (8th Cir. 2005). *See generally, Zewdie v. Ashcroft*, 381 F.3d 804 (8th Cir. 2004) (finding the Board’s and the Immigration Judge’s corroborating evidence standard too high and rejecting their finding that the alien should have provided medical documentation to support her testimony that the visible scars on her feet was consistent with her account of torture).

The lack of corroborating evidence can undermine an alien’s credibility. *See Ombongi v. Gonzales*, 417 F.3d 823, 826 (8th Cir. 2005) (But finding the “dearth” of corroborating evidence, especially from “friendly” sources, when combined with other credibility issues case substantial doubts on the alien’s overall credibility). *See also Eta-Ndu v. Gonzales*, 411 F.3d 977, 985-86 (8th Cir. 2005) (finding no error by the Board and the Immigration Judge regarding the alien’s implausible explanations for questionable evidence and the lack of objective corroborating evidence); *Loulou v. Ashcroft*, 354 F.3d 706, 709 (8th Cir. 2004) (agreeing with the Immigration Judge that the alien was not credible and stating that an “alien’s failure to present easily available, material, corroborating evidence to support [his or] her asylum claim may doom [his or] her application for asylum”).

The court seemed to find that the Immigration Judge does not need to make an explicit credibility finding prior to requiring additional corroborating evidence but must explain why it is reasonable to expect such corroborating evidence. *See Eta-Ndu v. Gonzales*, 411 F.3d 977, 984 (8th Cir. 2005).

BUT SEE: Where an Immigration Judge does not make a credibility finding, the alien’s claim could be found to be objectively reasonable even though the alien did not submit corroborating evidence. *See Ghasemimehr v. Ashcroft*, 7 F.3d 1389, 1391 (8th Cir. 1993). Also *El-Sheikh v. Ashcroft*, 388 F.3d 643, 647 (8th Cir. 2004) requires an explicit credibility determination prior to finding a failure based on burden of proof due to a lack of corroborative evidence. *Khrystodorov v. Mukasey*, 551 F.3d 775, 783 (8th Cir. 2008), however, stated that the court has remanded where no explicit

credibility determination and no analysis as to what material facts should have been reasonably corroborated.

“Credibility and the need for corroboration are intertwined such that a denial of asylum based on a lack of corroboration must include an explicit ruling on the applicant's credibility, an explanation of why it is reasonable to expect additional corroboration, or an assessment of the sufficiency of the explanations for the absence of corroborating evidence.” *Khrystodorov v. Mukasey*, 551 F.3d 775, 783 (8th Cir. 2008), citing *Eta-Ndu v. Gonzales*, 411 F.3d 977, 984 (8th Cir. 2005).

An Immigration Judge may request corroborating evidence where an alien's credibility is in question. See *Nyama v. Ashcroft*, 357 F.3d 812, 817 (8th Cir. 2004) (per curiam).

It was not unreasonable for Immigration Judge and BIA to require corroboration of well-recognized newspaper, as article should be available, and where alien provided not explanation for her failure to obtain the article. Moreover, although alien asserted that corroboration from nuns who purportedly harbored her would put them in danger, the court noted that there was no evidence that alien had made any attempt to contact the nuns or request corroboration. See *Ntangsi v. Holder*, 554 F.3d 1142, 1148-49 (8th Cir. 2009).

“An [Immigration Judge] can base a credibility determination on the lack of corroborating evidence if the judge also encounters inconsistencies in testimony, contradictory evidence, or inherently improbable testimony.” See *Esaka v. Ashcroft*, 397 F.3d 1105, 1110 (8th Cir. 2005). See generally, *Hassanein v. Ashcroft*, 380 F.3d 324 (8th Cir. 2004) (upholding an adverse credibility finding based upon a variety of factors).

In order to find that an alien failed to meet his or her burden of proof due to a failure to provide corroborating evidence, an Immigration Judge or the Board must ““(1) rule explicitly on the credibility of [the applicant's] testimony; (2) explain why it was reasonable to expect additional corroboration; or (3) assess the sufficiency of [the applicant's] explanations for the absence of corroborating evidence.”” See *Bushira v. Gonzales*, 442 F.3d 626, 631 n. 2 (8th Cir. 2006), quoting *El-Sheikh v. Ashcroft*, 388 F.3d 643, 647 (8th Cir. 2004) (which agreed with the 2d & 3d circuit approaches and itself quoted *Diallo v. INS*, 232 F.3d 279, 287 (2d Cir. 2000)).

“Corroborative evidence is not required to support an asylum application; however, when corroborative evidence should be readily accessible to the alien, the failure to present such evidence is a reasoned factor for an [Immigration Judge] to consider in assessing the alien's credibility.” *Hoxha v. Gonzales*, 432 F.3d 919, 920 (8th Cir. 2006).

An Immigration Judge is not required to accept or believe an alien's explanations for submitting corroborating evidence which lacks the indicia of authenticity but must state why the explanation is insufficient. See *Eta-Ndu v. Gonzales*, 411 F.3d 977, 985 (8th Cir. 2005), quoting *Diallo v. INS*, 232 F.3d 279, 289-90 (2d Cir. 2000) (“noting that the aliens ‘may meet their burden of proof by

offering a *believable* and sufficient explanation as to why such corroborating evidence was not presented”) (emphasis added in *Eta-Ndu*).

The Immigration Judge did not err by requiring additional corroborating evidence where the Immigration Judge had rendered an adverse credibility finding based upon the impeachment of the alien’s testimony by the introduction of three other asylum applications from three other aliens claiming to have the same name and similar factual scenario for asylum and where the alien did not provide a convincing explanation. *See Nyama v. Ashcroft*, 357 F.3d 812, 816-17 (8th Cir. 2004).

See Khrystodorov v. Mukasey, 551 F.3d 775 (8th Cir. 2008) for a good discussion concerning when it is appropriate to request information relating to country conditions.

1. If Testimony is Credible

An Immigration Judge and the Board may require corroborating evidence without an explicit credibility determination, where it is reasonable to expect such corroboration. *See Eta-Ndu v. Gonzales*, 411 F.3d 977, 984 (8th Cir. 2005) (rejecting alien’s claim that he could not be required to present corroborating evidence since his testimony was credible); *El-Sheikh v. Ashcroft*, 388 F.3d 643, 646 (8th Cir. 2004) (case was remanded for BIA to make credibility determination, and if so, was reasonably available corroborating evidence presented).

2. If Testimony is **not** Credible

In a REAL ID Act case, it was permissible for BIA to conclude that an alien’s failure to provide “corroborating evidence, without a satisfactory explanation as to why he could not obtain such evidence, further supported” the Immigration Judge’s adverse credibility finding. *Ezeagwu v. Mukasey*, 537 F.3d 836, 840 (8th Cir. 2008).

Where the testimony and affidavit of expert witnesses are excluded, an adverse credibility finding based, in part, on a lack of sufficient corroboration will not be supported. *See Tun v. Gonzales*, 485 F.3d 1014, 1026-29 (8th Cir. 2007) (noting that such considerations should go to the weight of the evidence).

The court affirmed an adverse credibility finding where, in addition to numerous discrepancies, the alien failed to submit any documentary evidence that he had been a refugee in Senegal. *See Sow v. Mukasey*, 546 F.3d 953 (8th Cir. 2008). *See also Damkam v. Holder*, 592 F.3d 846, 852-53 (8th Cir. 2010) (Pre-REAL ID Act case). *Redd v. Mukasey*, 535 F.3d 838, 843 (8th Cir. 2008).

An Immigration Judge does not err by requiring corroborating evidence where an alien is not credible. *See Nyama v. Ashcroft*, 357 F.3d 812, 817 (8th Cir. 2004) (per curiam).

B. Airport Statements

An Immigration Judge's adverse credibility finding can be supported by inconsistent statements in the alien's testimony, airport interview statement, and asylum application. *See Jalloh v. Gonzales*, 423 F.3d 894, 898-99 (8th Cir. 2005).

C. Authentication of Documents

While recognizing the necessity of State Department investigations re the authenticity of overseas documents, the court held that nonetheless, sufficient evidence of the reliability of the report must be presented. Reliance on such reports that do not provide sufficient information as to how the investigation was conducted was found by the court to be fundamentally unfair. *Banat v. Holder*, 557 F.3d 886, 890 (8th Cir. 2009).

An Immigration Judge can find that an alien's corroborating evidence was not credible because it bore "hallmarks of fraud" and can find the alien not credible if the alien does not provide a legitimate explanation for the evidentiary problems. *See Onsongo v. Gonzales*, 457 F.3d 849, 854 (8th Cir. 2006).

"[F]orensic evidence of fraud is not necessary where . . . the documents bore readily identifiable indications of fraud." *Onsongo v. Gonzales*, 457 F.3d 849, 854 (8th Cir. 2006). *See also Bropleh v. Gonzales*, 428 F.3d 772, 777-78 (8th Cir. 2005).

D. Department of State Country Reports

An Immigration Judge "reasonably may rely upon the State Department's assessment of current country conditions as they relate to the likelihood of future persecution, given the Department's expertise in international affairs." *See Alemu v. Gonzales*, 403 F.3d 572, 575 (8th Cir. 2005), quoting *Navarizo-Barrios v. Ashcroft*, 322 F.3d 561, 564 (8th Cir. 2003).

Information from a Department of State Country Report can support an adverse credibility finding. *See Hong Zhang Cao v. Gonzales*, 442 F.3d 657, 661 (8th Cir. 2006) (finding that alien's testimony that wife had a forced abortion, as evidence by an abortion certificate, but which was contradicted by information in the State Department Country Report which indicated that abortion certificates were only given for voluntary abortions was a substantive inconsistency which went to the heart of the alien's asylum claim). *See generally, Kondakova v. Ashcroft*, 383 F.3d 792, 795 (8th Cir. 2004) (distinguishing facts of case regarding the use of State Department Country Reports from the facts in *Gailius v. INS*, 147 F.3d 34 (1st Cir. 1998), where the alien produced specific documentary corroborating evidence of the asylum claim).

E. False Documents, including False Statements

“The BIA or an [Immigration Judge] may reach an adverse credibility determination based on the applicant’s submission of fraudulent documents, if the [applicant] fails to offer a legitimate explanation for the suspected fraud.” *Rafiyev v. Mukasey*, 536 F.3d 853, 856 (8th Cir. 2008). *See also Camishi v. Holder*, 616 F.3d 883 (8th Cir. 2010).

Testimony from a forensics document examiner and a United States embassy investigation supported the Immigration Judge’s finding that documents were fraudulent. Even assuming that the alien’s explanation (“nefarious activity by the Azerbaijan government” for the fraud is “plausible,”) because it does not compel the conclusion that the BIA and Immigration Judge erred by not accepting the explanation, the BIA’s and Immigration Judge’s alternative conclusion was also reasonable. *See Rafiyev v. Mukasey*, 536 F.3d 853, 856-58 (8th Cir. 2008). *See also Camishi v. Holder*, 616 F.3d 883 (8th Cir. 2010) (forensics evidence that documents supposedly issued by different entities at different points in time were apparently issued by the same source, and no satisfactory explanation offered).

A fraudulent document submitted to corroborate a key element of an alien’s asylum claim can support an adverse credibility finding. *See ” Nadeem v. Holder*, 599 F.3d 869, 873 (8th Cir. 2010); *Bropleh v. Gonzales*, 428 F.3d 772, 777 (8th Cir. 2005).

An Immigration Judge can find that an alien’s corroborating evidence was not credible because it bore “hallmarks of fraud” and can find the alien not credible if the alien does not provide a legitimate explanation for the evidentiary problems. *See Onsongo v. Gonzales*, 457 F.3d 849, 854 (8th Cir. 2006).

“[F]orensic evidence of fraud is not necessary where . . . the documents bore readily identifiable indications of fraud.” *See Onsongo v. Gonzales*, 457 F.3d 849, 854 (8th Cir. 2006). *See also Bropleh v. Gonzales*, 428 F.3d 772, 777-78 (8th Cir. 2005). These can include similar language, grammar and spelling errors in separate affidavits purportedly written by two different individuals. *Nadeem v. Holder*, 599 F.3d 869, 873 (8th Cir. 2010).

“Not every factual assertion in an applicant’s testimony or application that turns out to be incorrect will support a finding of fraud. Instead, fraud requires that the applicant actually know that the factual assertion was false.” *See Hailemichael v. Gonzales*, 454 F.3d 878 (8th Cir. 2006) (providing examples before finding that the Immigration Judge erred in terminating an alien’s asylum grant based solely on documents attached to the DHS’s motion to reopen where those documents contained no facts indicating that the alien had engaged in fraud).

“An alien’s history of submitting falsehoods to immigration and law enforcement officers is a valid consideration in the Attorney General’s exercise of discretion.” *Ibrahim v. Gonzales*, 434 F.3d 1074, 1079 (8th Cir. 2006) (upholding Immigration Judge’s adverse credibility finding and alternate finding that alien did not deserve asylum in the exercise of discretion).

An Immigration Judge did not engage in improper speculation by finding that the burn marks on the alien's passport were "spectacularly inconsistent" with the alien's testimony that the passport was burned in a house fire where the Immigration Judge explained why he found that the passport had been tampered with and the evidence of burning on the passport did not require a forensics examiner. *See Bropleh v. Gonzales*, 428 F.3d 772, 777 (8th Cir. 2005).

F. New Evidence on Appeal

The court citing to 8 U.S.C. § 1252(a)(1) and *Xiao Xing Ni v. Gonzales* 494 F.3d 260, 265 (2d Cir. 2007), held that it could not order remand for the BIA to further consider the alien's claims, where the alien submitted new evidence to the court. *See Ezeagwu v. Mukasey*, 537 F.3d 836, 840 (8th Cir. 2008).

See Khrystodorov v. Mukasey, 551 F.3d 775, 785 (8th Cir. 2008), for a good discussion concerning "new" evidence. The court found that the aliens had notice and opportunity to obtain and submit newspaper article and upheld denial of motion to reopen.

NINTH CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

Admission of prior dishonesty can support an adverse credibility determination. *Don v. Gonzales*, 476 F.3d 738, 742 n. 5, 743-44 (9th Cir. 2007); *see also Dhital v. Mukasey*, 532 F.3d 1044, 1051 (9th Cir. 2008) (evaluating alien’s misrepresentations “in light of all the circumstances of the case,” and upholding adverse credibility finding where alien initially filed a fraudulent asylum application, and repeated his fabricated narrative during both his asylum interview and his first removal hearing); *Malkandi v. Mukasey*, 544 F.3d 1029, 1039 (9th Cir. 2008) (finding, in a national security-related case arising under the REAL ID Act, that it was “inescapable that [the alien’s] history of misrepresentations about his past and continued evasion of the truth casts a shadow over his present story”).

NOTE: The court rejected an adverse credibility finding based in part on the alien’s prior “misstatements” and “lies” to immigration officials in Canada and the United States, because “[n]one of the misrepresentations to which the IJ point[ed] to the heart of [the alien’s] asylum claim.” *See Kaur v. Ashcroft*, 379 F.3d 876, 889 (9th Cir. 2004), *citing Akinmade v. INS*, 196 F.3d 951, 956 (9th Cir. 1999) (holding that “even if the [alien] had lied about his involvement in the forging of the passport or about how he obtained his South Korean airline ticket, those acts would not support an adverse credibility determination” because they were incidental to his asylum claim).

“Because credibility is quintessentially an issue for the trier of fact, the [Immigration Judge] is in the best position to determine, conclusively and explicitly, whether or not the [alien] is to be believed.” *See Mendoza Manimbao v. Ashcroft*, 329 F.3d 655, 661-62 (9th Cir. 2003).

Although the court will give deference to an Immigration Judge’s adverse credibility finding, the court still examines the record to determine “whether substantial evidence supports [the Immigration Judge’s] conclusion” and determine whether the Immigration Judge’s reasoning is “fatally flawed.” *See Gui v. INS*, 280 F.3d 1217, 1225 (9th Cir. 2002) (internal quotation marks and citations omitted); *see also Yan Xia Zhu v. Mukasey*, 537 F.3d 1034, 1038-45 (9th Cir. 2008) (overturning adverse credibility finding where all of the grounds underlying the finding either were “based on speculation, [were] contradicted by the record, or [were] minor inconsistencies that [did] not go to the heart of [the alien’s] claim”) (internal quotation marks and citations omitted); *Malkandi v. Mukasey*, 576 F.3d 906, 918 (9th Cir. 2009) (observing that the respondent’s quibbling over minor details failed to overcome the Board’s adverse credibility finding under the REAL ID Act standard).

An Immigration Judge “must have a legitimate articulable basis to question the [alien’s] credibility, and must offer specific, cogent reason for any stated disbelief.” *See Lei Li v. Holder*, 629 F.3d 1154,

1157 (9th Cir. 2011); *Hartooni v. INS*, 21 F.3d 336, 342 (9th Cir. 1994); *see also Tekle v. Mukasey*, 533 F.3d 1044, 1052 (9th Cir. 2008); *Jiamu Wang v. INS*, 352 F.3d 1250, 1253 (9th Cir. 2003).

NOTE: In an unpublished decision, the court held that “The [Immigration Judge’s] reasoning that post-traumatic stress is required to explain a petitioner’s affectless testimony about abuse is not “a specific, cogent reason for the disbelief,” *citing Paredes-Urrestarazu v. INS*, 36 F.3d 801, 820-21 (9th Cir. 1994).

Any reason articulated by the Immigration Judge for disbelieving the asylum applicant’s testimony “must be substantial and bear a legitimate nexus to the reason.” *See Salaam v. INS*, 229 F.3d 1234, 1238 (9th Cir. 2000).

“To determine whether substantial evidence supports an [Immigration Judge’s] credibility determination, we [the court] will evaluate each ground cited by the [Immigration Judge] for [his] finding.” *See Xuan Wang v. Ashcroft*, 341 F.3d 1015, 1021 (9th Cir. 2003).

As long as at least one of the grounds underlying an adverse credibility finding is supported by substantial evidence and goes to the heart of the claim, the Court is bound to accept the Immigration Judge’s credibility finding. *See Li v. Ashcroft*, 378 F.3d 959, 964 (9th Cir. 2004); *see also Jiamu Wang v. INS*, 352 F.3d 1250, 1259 (9th Cir. 2003), *citing Hakeem v. INS*, 273 F.3d 812, 816 (9th Cir. 2001).

The Immigration Judge must conduct an individualized credibility analysis. *See Wenda Ge v. Ashcroft*, 367 F.3d 1121, 1126 (9th Cir. 2004); *see also Shah v. INS*, 220 F.3d 1062, 1069 (9th Cir. 2000).

Even though alien provided inconsistent testimony on one matter, he should still be presumed credible as to all other matters. *See Jibril v. Gonzales*, 423 F.3d 1129, 1134 (9th Cir. 2005).

An Immigration Judge must make an explicit adverse credibility finding. *See Tijani v. Holder*, 628 F.3d 1071, 1080 (9th Cir. 2010) (“an adverse credibility finding does not require the recitation of a particular formula, yet the finding must be ‘explicit’”) (pre-REAL ID Act case); *Kalubi v. Ashcroft*, 364 F.3d 1134, 1137-38 (9th Cir. 2004), *quoting He v. Ashcroft*, 328 F.3d 593, 595 (9th Cir. 2003). *See also Mendoza Manimbao v. Ashcroft*, 329 F.3d 655, 658-59 (9th Cir. 2003); *Shoaferra v. INS*, 228 F.3d 1070, 1075 n.3 (9th Cir. 2000).

“Implicit credibility findings in passing” are not considered an explicit adverse credibility finding. *See Kalubi v. Ashcroft*, 364 F.3d 1134, 1137-38 (9th Cir. 2004), *citing Mendoza Manimbao v. Ashcroft*, 329 F.3d 655, 658-59 (9th Cir. 2003); *see also Aguilera-Cota v. INS*, 914 F.2d 1375, 1383 (9th Cir. 1990). An Immigration Judge’s statement that she did “not know what to believe about [the alien’s] claim” does not amount to an explicit adverse credibility determination. *See Karapetyan v. Mukasey*, 543 F.3d 1118, 1123 n.4 (9th Cir. 2008) (internal quotation marks and citation omitted).

In the absence of an explicit adverse credibility finding, an asylum applicant's testimony must be accepted as true. *See Sinha v. Holder*, 564 F.3d 1015, 1020 (9th Cir. 2009); *Kalubi v. Ashcroft*, 364 F.3d 1134, 1137 (9th Cir. 2004), citing *Kataria v. INS*, 232 F.3d 1107, 1114 (9th Cir. 2000); *see also Navas v. INS*, 217 F.3d 646, 652 n.3 (9th Cir. 2000); *Maldonado-Cruz v. INS*, 883 F.2d 788, 792 (9th Cir. 1989) (holding that the Board's failure to consider credibility leads to the presumption that it found the alien credible); *see also Nehad v. Mukasey*, 535 F.3d 962 (9th Cir. 2008) (observing that, in reviewing the denial of a motion to reopen, the court accepts an alien's testimony as true unless the Immigration Judge has made an explicit finding that the alien's testimony lacks credibility).

BUT SEE: 1) In the absence of an explicit adverse credibility finding, the court "remand[s] credibility determinations 'when the IJ or the BIA has raised a doubt as to [an alien's] credibility.'" *See Doissaint v. Mukasey*, 538 F.3d 1167, 1171 n.3 (9th Cir. 2008) (citation omitted).

2) The court may not "act as fact-finders, or . . . determine credibility in the first instance." Therefore, in a case where the Board had declined to address the Immigration Judge's adverse credibility finding and had instead disposed of the case on an alternate ground (changed country conditions), the court remanded the record for further proceedings because the Board had neglected to adequately address in the first instance whether the alien was eligible for a humanitarian grant of asylum pursuant to 8 C.F.R. § 1208.13(b)(1)(iii)(A). *See Sowe v. Mukasey*, 538 F.3d 1281, 1287 (9th Cir. 2008).

The Board may not deny an applicant's motion to reopen to consider a new Convention Against Torture claim on the basis that the applicant's asylum application had previously been denied because of an adverse credibility finding, where the CAT claim is different from the asylum claim. *See Kamalthus v. INS*, 251 F.3d 1279 (9th Cir. 2001).

BUT SEE: Alien's right to due process was not violated when the Immigration Judge's finding that the alien's asylum claim was not credible dictated the outcome of his CAT claim, given that the Immigration Judge considered the documentary evidence presented in support of the CAT claim and determined that it was insufficient to establish the alien's eligibility for protection under the CAT. *See Almaghzar v. Gonzales*, 457 F.3d 915, 921-22 (9th Cir. 2006).

"Generalized statements that do not identify specific examples of evasiveness or contradiction in the [alien's] testimony" are not sufficient to support an adverse credibility finding. *See Garrovillas v. INS*, 156 F.3d 1010, 1013 (9th Cir. 1998); *Osorio v. INS*, 99 F.3d 928, 931-32 (9th Cir. 1996) (reversing adverse credibility finding where factfinder failed to identify specific inconsistencies).

In a claim of religious persecution, the Court upheld an Immigration Judge's adverse credibility finding based on the alien's violation of one of the tenets of his alleged Jehovah's Witness faith, where such violation was "but one of numerous" indications of the alien's lack of credibility. *See Mejia-Paiz v. INS*, 111 F.3d 720, 723-24 (9th Cir. 1996).

NOTE: In *Mejia-Paiz v. INS*, 111 F.3d 720, 723-24 (9th Cir. 1996), the Court also mentioned that the alien was unable to recall the year when he became a Jehovah's Witness, even though he claimed that his religion was the catalyst for his problems.

BUT SEE: 1) Asylum applicant's lack of knowledge of Sikh religion did not support adverse credibility finding, where claim was based on imputed political opinion. *See Singh v. Gonzales*, 439 F.3d 1100, 1106-10 (9th Cir. 2006).

2) An adverse credibility finding cannot be grounded in speculation regarding how an adherent of the alien's religion would dress and behave, or conjecture regarding the knowledge that an adherent of the religion should possess. *See Lei Li v. Holder*, 629 F.3d 1154, 1157 (9th Cir. 2011); *Cosa v. Mukasey*, 543 F.3d 1066 (9th Cir. 2008).

Where the alien lied under oath, both on his asylum application and before the asylum officer, regarding the basis of his claim, the court upheld the adverse credibility finding and the resultant denial of the alien's application for asylum and withholding of removal. *See Martinez v. Holder*, No. 04-72975, 2009 WL 514101 (9th Cir. March 3, 2009). The court noted that it must "construe and enforce the oath strictly" if the court is to "be more lenient elsewhere in the process" in order to "reduce the risk of error and to mitigate unfair procedures in immigration proceedings." *See Martinez v. Holder*, No. 04-72975, 2009 WL 514101, at *5 (9th Cir. March 3, 2009).

Note: The dissent, relying on *Turcios v. INS*, 821 F.2d 1396 (9th Cir. 1987), found that the alien's explanation for his prior lies revealed that he had initially misrepresented the basis of his claim "solely to avoid persecution in [his homeland] based on his sexual orientation;" the dissent therefore opined that the adverse credibility finding did not "hold water."

In a case where the Board had erroneously declined to address the alien's CAT claim, and it was unclear whether the Board had ever reviewed the adverse credibility finding underlying the denial of the CAT claim, the court remanded the record for the Board to consider the alien's eligibility for CAT relief in the first instance. *See Doissaint v. Mukasey*, 538 F.3d 1167 (9th Cir. 2008).

B. Asylum Application

"An [asylum] applicant's testimony is not per se lacking in credibility simply because it includes details that are not set forth in the asylum application." *See Lopez-Reyes v. INS*, 79 F.3d 908, 911 (9th Cir. 1996).

NOTE: The majority opinion disagreed with the dissenting opinion that the omissions constituted an inconsistency with the asylum applicant's testimony, but rather found that the testimony contained additional information.

BUT SEE: In *Alvarez-Santos v. INS*, 332 F.3d 1245, 1254 (9th Cir. 2003), the court supported an Immigration Judge's adverse credibility finding based on the asylum applicant's failure to mention on either of his asylum applications or during direct examination "a dramatic incident in which he was attacked, stabbed, and fled to the mountains," and which

precipitated his flight from his homeland, simply because he had failed to remember the incident until after a break in his testimony.

Although minor inconsistencies cannot support an adverse credibility finding, the numerous contradictions within the asylum applicant's testimony and between her testimony and asylum application were based on permissible grounds and supported the Immigration Judge's adverse credibility finding. *See Kaur v. Gonzales*, 418 F.3d 1061 (9th Cir. 2005).

Differences of account of events as related in the alien's two asylum applications supported Immigration Judge's adverse credibility finding, where the differences went "to the heart" of the alien's claim. *See Valderrama v. INS*, 260 F.3d 1083 (9th Cir. 2001); *de Leon-Barrios v. INS*, 116 F.3d 391, 393-94 (9th Cir. 1997). *See also Saval v. Holder*, 623 F.3d 666 (9th Cir. 2010) (discrepancy between I-589 and alien's testimony as to critical issue of alien's religion).

Discrepancies between the alien's testimony and application regarding number of times he was incarcerated and regarding injury allegedly sustained in jail supported Immigration Judge's adverse credibility finding. *See Berroteran-Melendez v. INS*, 955 F.2d 1251, 1256-57 (9th Cir. 1992).

BUT SEE: 1) The Immigration Judge erred in finding the respondent's testimony not credible because it was more detailed than the asylum application, where the application was prepared by the asylum applicant himself without the assistance of representation. *See Smolnikova v. Gonzales*, 422 F.3d 1037, 1045 (9th Cir. 2005).

2) The Court did not find substantial evidence in another case where the Immigration Judge failed to provide a nexus between the less than detailed asylum application and adverse credibility finding. *See Lopez-Reyes v. INS*, 79 F.3d 908, 911 (9th Cir. 1996) (internal quotation and cite omitted).

3) Immigration Judge's subjective belief of what a persecuted person would include in his asylum application did not support an adverse credibility finding. *See Bandari v. INS*, 227 F.3d 1160, 1167-68 (9th Cir. 2000).

4) The Immigration Judge erred in finding the alien not credible based on a more detailed description in the asylum application of the forms of torture that the alien experienced, where the alien consistently mentioned during his airport interview and credible fear interview that he was beaten while in police custody. *See Arulampalam v. Ashcroft*, 353 F.3d 679, 688 (9th Cir. 2003).

An alien establishes by clear and convincing evidence that his asylum application was timely filed, notwithstanding inconsistencies in his testimony regarding the date of his departure from his homeland, where "any view of the [undisputed] historical facts necessarily establishes that [the alien] filed his asylum application within one year of his arrival [into the United States]." *See Khunaverdians v. Mukasey*, 548 F.3d 760 (9th Cir. 2008).

In *Hakopian v. Mukasey*, 551 F.3d 843 (9th Cir. 2008), the court found that the timely filing of the alien's asylum application had been established by clear and convincing evidence where the arrival date alleged in the Notice to Appear, and admitted by the alien, was less than 1 year prior to the date on which the asylum application had been filed (despite the fact that the Immigration Judge's adverse credibility finding had been upheld in a concurrently filed memorandum disposition).

C. Asylum Officer Interview

The Court was particularly critical of an Immigration Judge's reliance on the asylum officer's Assessment to Refer where there was no transcript of the interview, no indication of the language used or of the administration of an oath, the officer did not testify at the hearing, and the respondent was given no opportunity to explain the discrepancies noted by the officer. *See Singh v. Gonzales*, 403 F.3d 1081, 1085 (9th Cir. 2005).

The Court has upheld adverse credibility findings based on inconsistencies between statements made before an asylum officer and FBI agent and those made before an Immigration Judge, where the interviewers were present for examination. *See Al-Harbi v. INS*, 242 F.3d 882, 890 (9th Cir. 2001).

D. Conjecture and Speculation

"[S]peculation and conjecture cannot form the basis of an adverse credibility finding." *See Wenda Ge v. Ashcroft*, 367 F.3d 1121, 1124 (9th Cir. 2004); *followed by Cosa v. Mukasey*, 543 F.3d 1066 (9th Cir. 2008) (confirming that "'non-evidence-based' assumptions cannot support an adverse credibility determination," and rejecting adverse credibility finding on such basis).

"Speculation and conjecture cannot form the basis of an adverse credibility finding, which must instead be based on substantial evidence." *See Yan Xia Zhu v. Mukasey*, 537 F.3d 1034, 1038-43 (9th Cir. 2008) (overturning adverse credibility finding where all of the grounds underlying the finding either were "based on speculation, [were] contradicted by the record, or [were] minor inconsistencies that [did] not go to the heart of [the alien's] claim") (internal quotation marks and citations omitted); *Kumar v. Gonzales*, 444 F.3d 1043, 1050-53 (9th Cir. 2006); *Jiamu Wang v. INS*, 352 F.3d 1250, 1254-58 (9th Cir. 2003); *Shah v. INS*, 220 F.3d 1062, 1071 (9th Cir. 2000).

Unsupported disbelief is not substantial evidence. *See Mosa v. Rogers*, 89 F.3d 601, 605 (9th Cir. 1996), *superseded by statute on other grounds*, 8 U.S.C. § 1252(g) (1996), Pub.L. No. 104-208, 110 Stat. 3009).

The court is "also mindful that an [Immigration Judge] may develop an expertise by repetitive examination of particular documents or may develop familiarity with the document practices of certain foreign regions." However, to rely on such expertise, the court requires that "such expertise be articulated on the record so that the reviewing court can be confident that the Immigration Judge's determinations are based on objective criteria particularized to the document." *See Dao Lu Lin v. Gonzales*, 434 F.3d 1158, 1163 (9th Cir. 2006).

“[A]n [Immigration Judge] must be allowed to exercise common sense in rejecting a[n] [asylum applicant’s] testimony even if the [Immigration Judge] cannot point to specific, contrary evidence in the record to refute it.” *See Jibril v. Gonzales*, 423 F.3d 1129, 1135 (9th Cir. 2005).

The Court has held that the general assertion about conditions of peace in India was insufficient to support a negative credibility finding, as it was a “blanket statement” without “individualized analysis” of the alien’s credibility, and was based on conjecture and speculation. *See Shah v. INS*, 220 F.3d 1062, 1069 (9th Cir. 2000).

An IJ’s conclusion that the alien’s brother-in-law orchestrated the printing of a false newspaper article submitted to corroborate the asylum claim was not “speculation and conjecture;” rather, the IJ properly considered the brother-in-law’s political stature as a factor supporting the DHS’s explanation of happened. *Khadka v. Holder*, 618 F.3d 996, 1001, n.3 (9th Cir. 2010).

Examples of impermissible conjecture and speculation:

Example 1: What an Immigration Judge believes police would ask an alien during an interrogation. *See Singh v. Gonzales*, 439 F.3d 1100, 1108 (9th Cir. 2006).

Example 2: An Immigration Judge’s reliance on “his own visual handwriting analysis” to find death certificate was a forgery. *See Kumar v. Gonzales*, 444 F.3d 1043, 1050-51 (9th Cir. 2006).

Example 3: An Immigration Judge’s disbelief that an alien would jeopardize her status in China by transporting illegal Falun Gong materials as a favor to a “mere acquaintance.” *See Ling Zhou v. Gonzales*, 437 F.3d 860, 865 (9th Cir. 2006).

Example 4: “[Immigration Judge’s] finding that due to the ‘size of China’ [the asylum applicant] would not be found and arrested after five months of participation in a home church.” *See Lin Quan v. Gonzales*, 428 F.3d 883, 887 (9th Cir. 2005).

Example 5: An Immigration Judge’s belief that alien would have moved to Germany with her husband if she really feared for her life, where alien testified only that there was a “possibility” that her husband would obtain a permanent assignment in Germany. *See Smolniakova v. Gonzales*, 422 F.3d 1037, 1045-46 (9th Cir. 2005).

Example 6: An Immigration Judge’s belief of how Indian passport officials would carry out their duties. *See Kaur v. Ashcroft*, 379 F.3d 876, 886-87 (9th Cir. 2004).

Example 7: An Immigration Judge’s belief of how a “truth-telling asylum applicant (speaking through a translator who spoke broken English) would describe [an incident].” *See Kaur v. Ashcroft*, 379 F.3d 876, 887-88 (9th Cir. 2004).

Example 8: An Immigration Judge's disbelief that the Chinese government would provide a living allowance to someone who had been fired for a second unauthorized pregnancy. *See Wenda Ge v. Ashcroft*, 367 F.3d 1121, 1125 (9th Cir. 2004).

Example 9: An Immigration Judge's belief why alien did not apply for asylum immediately upon entry into the United States. *See Jian Guo v. Ashcroft*, 361 F.3d 1194, 1201-02 (9th Cir. 2004).

Example 10: An Immigration Judge's personal belief that a Somalia national would have a difficult time entering United States on a false passport, and that immigration inspectors follow procedures in manual scrupulously. *See Shire v. Ashcroft*, 388 F.3d 1288, 1295-96 (9th Cir. 2004).

Example 11: An Immigration Judge's belief that the asylum applicant would not be able to evade a roadblock guarded by "experienced soldiers." *See Arulampalam v. Ashcroft*, 353 F.3d 679, 687 (9th Cir. 2003).

Example 12: An Immigration Judge's disbelief of asylum applicant's testimony about the use of force against student demonstrators when there was no record evidence contradicting the testimony. *See Jiamu Wang v. INS*, 352 F.3d 1250, 1255-56 (9th Cir. 2003).

Example 13: An Immigration Judge's hypothesis on alien's motive for leaving Sri Lanka. *See Paramasamy v. Ashcroft*, 295 F.3d 1047, 1052 (9th Cir. 2002).

Example 14: An Immigration Judge's opinion on "how best to silence a dissident." *See Gui v. INS*, 280 F.3d 1217, 1226-27 (9th Cir. 2002).

Example 15: An Immigration Judge's disbelief that an 18-year-old could lead an organization and would continue publicizing anti-government views after having been persecuted. *See Salaam v. INS*, 229 F.3d 1234, 1238 (9th Cir. 2000).

Example 16: An Immigration Judge's belief that an alien should have bled due to severity of beating. *See Bandari v. INS*, 227 F.3d 1160, 1167 (9th Cir. 2000).

Example 17: An Immigration Judge's conjecture on the affect BJP's victory would have on existing persecution when past persecution has been shown. *See Shah v. INS*, 220 F.3d 1062, 1069 (9th Cir. 2000).

Example 18: Board's speculation regarding quantity of correspondence received in alien's spouse's 10 years working for the BJP, and conjecture that letters were forged. *See Shah v. INS*, 220 F.3d 1062, 1071 (9th Cir. 2000).

Example 19: An Immigration Judge's belief of "what is expected behavior of a Guatemalan Indian." *See Chanchavac v. INS*, 207 F.3d 584, 588 n.2 (9th Cir. 2000).

Example 20: An Immigration Judge's speculation about how a rape victim would act. *See Yan Xia Zhu v. Mukasey*, 537 F.3d 1034, 1039-40 (9th Cir. 2008).

Example 21: An Immigration Judge's "speculation about the [alien's] faith -- on everything from how [the alien] should dress and wear her hair to comport with her beliefs to what books of the Bible are most important." *See Cosa v. Mukasey*, 543 F.3d 1066 (9th Cir. 2008) (rejecting adverse credibility finding based on speculation as well as "the [Immigration Judge's] disdain for [the alien's] religious beliefs").

Example 22: An Immigration Judge's speculation as to, *inter alia*, why North Koreans would flee to China rather than South Korea; why the respondent would need to come to the U.S. to practice his religion when he was unaware of what the teachings of the registered Christian church in his hometown in China were; and why the respondent would pay such a large sum (120,000 RMB) to leave China when he stated he initially only planned to stay remain in the U.S. for a few years. *Li v. Holder*, 559 F.3d 1096 (9th Cir. 2009).

Example 23: The Board noted in passing that the alien's "allegiances and religious convictions appear to shift depending on his circumstances." While this was not a legitimate basis for the adverse credibility finding, it also was not "significant enough to defeat the [otherwise appropriate] adverse credibility finding." *See Malkandi v. Mukasey*, 576 F.3d 906, 919 (9th Cir. 2009).

Example 24: An Immigration Judge's "perception of a petitioner's ignorance of religious doctrine is not a proper basis for an adverse credibility finding." *Lei Li v. Holder*, 629 F.3d 1154, 1157 (9th Cir. 2011) (*citing Cosa v. Mukasey*, 543 F.3d 1066, 1069-70 (9th Cir. 2008)).

Example 25: An Immigration Judge's assumption that the alien's employment termination must have been for reasons more serious than a 1 week absence from work, and his disbelief of the alien's testimony (and his father's affidavit) that the Indian police remained interested in the alien six years after his departure because he was communicating with his father by phone from the United States. *Chawla v. Holder*, 599 F.3d 998 (9th Cir. 2010).

Example 26: It was impermissible speculation for an Immigration Judge to conclude that (1) a Haitian asylum applicant who was a member of Lavalas and songwriter for Aristide would have a sophisticated understanding of Haiti's complex political situation; and (2) that the alien's failure to depart Haiti sooner following the incident giving rise to his fear of persecution undermined his credibility. *Joseph v. Holder*, 600 F.3d 1235, 1245-46 (9th Cir. 2010).

E. Credibility vs. Plausibility

Testimony that is implausible can support an adverse credibility finding. *See Don v. Gonzales*, 476 F.3d 738, 743 (9th Cir. 2007), *citing Jibril v. Gonzales*, 423 F.3d 1129, 1135 (9th Cir. 2005).

The Court rejected an Immigration Judge's finding that an asylum applicant's claimed years of resistance to joining the Ba'ath party in Iraq was implausible in light of the party's reputation for ruthless recruitment tactics: "a petitioner's ability to withstand severe persecution does not make it less likely that such persecution occurred." *Mousa v. Mukasey*, 530 F.3d 1025, 1027 (9th Cir. 2008); see also *Gui v. INS*, 280 F.3d 1217, 1225-28 (9th Cir. 2002) (rejecting determination that various portions of alien's testimony were implausible).

In a case arising under the REAL ID Act, the court upheld an adverse credibility finding that was based in part on the implausibility of the alien's explanations for his ostensibly innocuous role in a plan to bring an Al Qaeda operative to the United States. See *Malkandi v. Mukasey*, 576 F.3d 906, 918 (9th Cir. 2009).

F. Demeanor

The demeanor-based adverse credibility finding must specifically and cogently refer to the non-verbal aspects of the alien's demeanor. See *Jibril v. Gonzales*, 423 F.3d 1129, 1137 (9th Cir. 2005) (finding that Immigration Judge failed to describe nonverbal behavior in decision and that record did not obviously show that the asylum applicant's responses were evasive or unresponsive); *Arulampalam v. Ashcroft*, 353 F.3d 679, 685-87 (9th Cir. 2003) (rejecting adverse credibility finding where Immigration Judge failed to provide specific examples of problems with alien's demeanor or take into consideration the alien's educational and cultural background).

A credibility determination that is based on an alien's demeanor is given substantial deference. See *Singh-Kaur v. INS*, 183 F.3d 1147, 1151 (9th Cir. 1999). In *Singh-Kaur*, the Court upheld the adverse credibility finding where the Immigration Judge observed that the alien "began to literally jump around in his seat and to squirm rather uncomfortably while testifying on cross-examination."

BUT SEE: 1) Immigration Judge's boilerplate demeanor findings were not upheld because they deprived alien of individualized credibility determination and were not accurate. See *Paramasamy v. Ashcroft*, 295 F.3d 1047, 1050-51 (9th Cir. 2002).

2) The court rejected an adverse credibility finding "based [not] on demeanor but instead stemm[ing] from pure speculation about how [an adherent of the alien's religion] might look and act." See *Cosa v. Mukasey*, 543 F.3d 1066, 1069 (9th Cir. 2008).

Non-verbal factors include the alien's expressions, how he sits or stands, nervousness, coloration, and modulation or pace of speech. See *Arulampalam v. Ashcroft*, 353 F.3d 679, 686 (9th Cir. 2003).

In a case arising under the REAL ID Act, the court upheld an adverse credibility finding that was based in part on the alien's striking change in demeanor when questioned about an Al Qaeda operative and his frequent evasiveness, where the Immigration Judge provided "detailed findings supported by concrete evidence" in relation to both the changes in demeanor and evasiveness. See *Malkandi v. Mukasey*, 576 F.3d 906, 919 (9th Cir. 2009).

G. Embellishment

Discrepancies that are not attempts to enhance the alien's persecution claim do not support an adverse credibility finding. *See Shah v. INS*, 220 F.3d 1062, 1068 (9th Cir. 2000) and *Zahedi v. INS*, 222 F.3d 1157, 1167-68 (9th Cir. 2000); *see also Hoque v. Ashcroft*, 367 F.3d 1190, 1195-96 (9th Cir. 2004) (alteration to letter corroborating alien's political position did not enhance his asylum claim); *Singh v. Ashcroft*, 362 F.3d 1164, 1172 (9th Cir. 2004) (minor difference in narration did not enhance claim that the applicant had been arrested on account of his political opinion); *Xuan Wang v. Ashcroft*, 341 F.3d 1015, 1021 (9th Cir. 2003).

The court upheld the Immigration Judge's adverse credibility based on the respondent's embellishment of the claim that the Indonesian government could/would not protect Chinese ethnics, and further exaggerated the impact of the discrimination suffered. *Halim v. Holder*, 590 F.3d 971, 976 (9th Cir. 2009) (Pre-REAL ID Act case).

Where an alien changes his account of persecution "so as to lessen the degree of persecution he experienced, rather than to increase it, the discrepancy generally does not support an adverse credibility finding." *See Stoyanov v. INS*, 172 F.3d 731, 736 (9th Cir. 1999); *see also Garrovillas v. INS*, 156 F.3d 1010, 1014 (9th Cir. 1998) (alien did not benefit from correcting error in application).

BUT SEE: There is no "per se rule that whenever inconsistencies technically weaken an asylum claim they can never serve as the basis of an adverse credibility finding." *See Kaur v. Gonzales*, 418 F.3d 1061, 1065-67 (9th Cir. 2005) (holding that "when inconsistencies that weaken a claim for asylum are accompanied by other indications of dishonesty-such as a pattern of clear and pervasive inconsistency or contradiction-an adverse credibility determination may be" appropriate).

H. Inconsistent Statements

An inconsistency that is related to an alien's claim of persecution, but does not relate to the basis for his fear of persecution or reveal anything material about the event that caused the alien to flee, does not support an adverse credibility finding. *See Singh v. Gonzales*, 439 F.3d 1100 (9th Cir. 2006).

In determining whether an inconsistency is a permissible ground for finding an asylum applicant not credible, the court wants "to avoid premising an adverse credibility finding on an asylum applicant's failure to remember non-material, trivial details that were only incidentally related to [his or] her claim of persecution." *See Kaur v. Gonzales*, 418 F.3d 1061, 1064 (9th Cir. 2005), *citing Osorio v. INS*, 99 F.3d 928, 931 (9th Cir. 1996).

"[F]alse statements and other inconsistencies must be viewed in light of all the evidence presented in the case," and those which weaken an asylum claim may support an adverse credibility finding where they are "accompanied by other indications of dishonesty." *See Kaur v. Gonzales*, 418 F.3d 1061, 1066 (9th Cir. 2005) (upholding adverse credibility finding based on "repeated and blatant inconsistencies," which cast doubt on the alien's credibility, even though the asylum applicant admitted to lying and presented a less dramatic story before the Immigration Judge) (emphasis added), *quoting Garrovillas v. INS*, 156 F.3d 1010, 1014 (9th Cir. 1998); *see also Don v. Gonzales*,

476 F.3d 738, 742 (9th Cir. 2007) (noting that when inconsistencies which weaken a claim are accompanied by other indications of dishonesty, such as a pattern of clear and pervasive inconsistency or contradiction, an adverse credibility determination may be supported by substantial evidence).

Corroborating witness's failure to mention incidents when she was not asked about them during structured direct and cross-examination is not an inconsistency. *See Hoque v. Ashcroft*, 367 F.3d 1190, 1196-97 (9th Cir. 2004).

It is error for an Immigration Judge to consider an alien's omission of detail in an unrecorded bond hearing as a basis for an adverse credibility finding. The court noted the informal nature, low level of representation, absence of procedural safeguards (including the requirement of an oath and a transcript of proceedings), and the distinct purpose of a bond hearing, as well as the regulatory requirement that the record of a bond hearing be kept separate, in reaching such holding. *Joseph v. Holder*, 600 F.3d 1235 (9th Cir. 2010).

1. Substantial Inconsistencies

Substantial discrepancies and inconsistencies that relate to the basis for the alien's alleged fear of persecution and go to the heart of the asylum claim support an adverse credibility finding. *See Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001) (alien's inconsistent testimony about the events leading up to his departure and the number of times he was arrested was not minor and related to the basis for his alleged fear of persecution).

An inconsistency goes to the heart of a claim if it concerns events central to the alien's version of why he was persecuted and fled. *See Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001).

The court upheld an adverse credibility finding where the alien presented an admittedly false political opinion-based claim in his original asylum application, perpetuated the false claim before the asylum officer, and then "changed his tune" before the Immigration Judge to provide an entirely new basis for his claim of past persecution (sexual orientation rather than political opinion). *See Martinez v. Holder*, 557 F.3d 1059 (9th Cir. March 3, 2009).

Examples of inconsistencies that support an adverse credibility finding:

Example 1: Discrepancies regarding identity, membership in a persecuted group, and date of entry. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Example 2: Geographic discrepancies that go to the heart of the asylum claim. *See Malhi v. INS*, 336 F.3d 989, 993 (9th Cir. 2003).

Example 3: Multiple inconsistencies related to the single incident of persecution. *See Pal v. INS*, 204 F.3d 935, 938 (9th Cir. 2000).

Example 4: Inconsistency regarding a crucial date upon which the alien predicated his claim. *See Don v. Gonzales*, 476 F.3d 738, 741 - 42 (9th Cir. 2007).

Example 5: Inconsistency between the alien's testimony and his own documentary evidence. *See Rizk v. Holder*, 629 F.3d 1083, 1089-90 (9th Cir. 2011) (testimony about break-in at odds w/ police report in evidence as to apartment number, who discovered break-in, and whether alien specifically accused anyone of the crime) (pre-REAL ID Act case); *Goel v. Gonzales*, 490 F.3d 735, 739 (9th Cir. 2007), *citing Jiamu Wang v. INS*, 352 F.3d 1250, 1258-59 (9th Cir. 2003).

Example 6: The respondent's admission that his previous asylum application (which he testified to under oath before an INS asylum officer) was untrue was sufficient to undermine the credibility of his later claim before the Immigration Judge. *Martinez v. Holder*, 557 F.3d 1059 (9th Cir. 2009) (Pre-REAL ID Act case). *See also Cortez-Pineda v. Holder*, 610 F.3d 1118, 1124 (9th Cir. 2010) (alien's prior admission that he provided a false date of entry in an earlier application for Temporary Protected Status was not a minor inconsistency about the date an incident occurred, but rather went to the heart of the claim) (Pre-REAL ID Act case).

2. Minor Inconsistencies

Discrepancies and inconsistencies that do not relate to the basis of the alien's alleged fear of persecution, go to the heart of the asylum claim, or reveal anything about the alien's fear for his safety do not support an adverse credibility finding. *See Singh v. Gonzales*, 439 F.3d 1100, 1106 (9th Cir. 2006); *see also Jiamu Wang v. INS*, 352 F.3d 1250, 1253 (9th Cir. 2003); *Akinmade v. INS*, 196 F.3d 951, 954 (9th Cir. 1999); *Ceballos-Castillo v. INS*, 904 F.2d 519, 520 (9th Cir. 1990) (upholding adverse credibility finding).

BUT SEE: Under the REAL ID Act, even minor inconsistencies support an adverse credibility finding. *See Jibril v. Gonzales*, 423 F.3d 1129, 1138 n.1 (9th Cir. 2005).

Examples of minor inconsistencies:

Example 1: Faulty or unreliable translations cannot support an adverse credibility finding. *See Zahedi v. INS*, 222 F.3d 1157, 1167-68 (9th Cir. 2000). Other examples: *Singh v. Gonzales*, 439 F.3d 1100, 1109 (9th Cir. 2006) (irregular translation of birth certificate); *Singh v. INS*, 292 F.3d 1017, 1021-23 (9th Cir. 2002) (lack of interpreter); *Abovian v. INS*, 219 F.3d 972, 979, *as amended by* 228 F.3d 1127 and 234 F.3d 492 (9th Cir. 2000) (incoherent and disjointed testimony result of mistranslation or miscommunication).

BUT SEE: Adverse credibility finding proper where alien did not contest any particular portion of the transcript or ask the court to remand the matter for clarification. *See Singh v. Ashcroft*, 367 F.3d 1139, 1143-44 (9th Cir. 2004).

Example 2: Perceived inconsistency about who paid bribe to get alien released from police custody. *See Singh v. Gonzales*, 439 F.3d 1100, 1106 (9th Cir. 2006).

Example 3: Typographical or clerical error. *See Kumar v. Gonzales*, 444 F.3d 1043, 1050-51 (9th Cir. 2006) (inclusion of photos of brother's injuries in record); *see also Shah v. INS*, 220 F.3d 1062, 1067-68 (9th Cir. 2000) (inconsistent date on husband's death certificate).

Example 5: Decision on where to seek asylum not a proper ground for an adverse credibility finding. *See Singh v. Gonzales*, 439 F.3d 1100, 1107 (9th Cir. 2006).

Example 6: Perceived inconsistency between asylum applicant and her husband's testimony about where husband was living does not go to the heart of the asylum claim. *See Lin Quan v. Gonzales*, 428 F.3d 883, 887 (9th Cir. 2005).

Example 7: Perceived inconsistency between asylum applicant's testimony and corroborating witness regarding whether assailants had walked or run away after attacking applicant does not go to heart of claim, where there were no inconsistencies regarding actual assault or threats. *See Smolniakova v. Gonzales*, 422 F.3d 1037, 1045 (9th Cir. 2005).

Example 8: “[A]bility to recall precise dates of events years after they happen is an extremely poor test of how truthful a witness’s substantive account is.” *See Singh v. Gonzales*, 403 F.3d 1081, 1090-91 (9th Cir. 2005). Other examples include: *Lin Quan v. Gonzales*, 428 F.3d 883, 887 (9th Cir. 2005) (concluding that discrepancy by one to one-and-a-half months in date when husband learned that asylum applicant was practicing Christianity was “minor”); *Bandari v. INS*, 227 F.3d 1160, 1166 (9th Cir. 2000) (holding that “[a]ny alleged inconsistencies in dates that reveal nothing about a petitioner’s credibility cannot form the basis of an adverse credibility finding”); *Vilorio-Lopez v. INS*, 852 F.2d 1137, 1147 (9th Cir. 1988) (finding that the adverse credibility finding was not supported by a minor inconsistency between testimony of two witnesses regarding date of death squad incident); *Blanco-Comarribas v. INS*, 830 F.2d 1039, 1043 (9th Cir. 1987) (holding that the adverse credibility finding was not supported by a discrepancy as to date father was killed); *Plateros-Cortez v. INS*, 804 F.2d 1127, 1131 (9th Cir. 1986) (finding that the adverse credibility finding was not supported by uncertainty regarding dates and inconsistency regarding place of employer’s death); *Martinez-Sanchez v. INS*, 794 F.2d 1396, 1400 (9th Cir. 1986) (concluding that “trivial errors” did not undermine alien’s credibility); *Damaize-Job v. INS*, 787 F.2d 1332, 1337-38 (9th Cir. 1986) (children’s birth dates).

BUT SEE: Alien’s inability to recall the year when he became a Jehovah’s Witness supported adverse credibility finding, given that he claimed persecution on account of his religious beliefs. *See Mejia-Paiz v. INS*, 111 F.3d 720, 723-24 (9th Cir. 1996).

Example 9: Inability to remember company name on B-1 visa application did not go to heart of claim based on Christian beliefs. *See Jian Guo v. Ashcroft*, 361 F.3d 1194, 1201 (9th Cir. 2004).

Example 10: How many times the asylum applicant transported people to demonstrations was related to his fear, but revealed nothing about the events that caused him to flee. *See Singh v. Gonzales*, 439 F.3d 1100, 1108-09 (9th Cir. 2006).

Example 11: Inconsistencies and “memory lapses” regarding alien’s experience going through immigration inspection, cities he passed through during bus trip from New York City to San Diego, and exact words used by persecutors found to be minor. *See Shire v. Ashcroft*, 388 F.3d 1288, 1295-98 (9th Cir. 2004).

Example 12: Discrepancy in background incident did not go to the heart of the alien’s claim. *See Kaur v. Ashcroft*, 379 F.3d 876, 888 (9th Cir. 2004).

Example 13: Discrepancies incidental to basis of asylum claim. *See Singh v. Ashcroft*, 362 F.3d 1164, 1171 (9th Cir. 2004) (concluding that alleged discrepancy regarding alien’s contact with militant Sikhs was not significant enough to justify an adverse credibility finding, given that alien’s asylum claim was not based on persecution by militant Sikhs). Other examples: *Zi Lin Chen v. Ashcroft*, 362 F.3d 611, 620 (9th Cir. 2004) (rejecting adverse credibility finding where discrepancies in alien’s testimony regarding her husband’s religious practices were not related to her claim based on coercive population control); *Abovian v. INS*, 219 F.3d 972, 978-79 as amended by 228 F.3d 1127 and 234 F.3d 492 (9th Cir. 2000) (finding that inconsistency about events not leading up to departure were minor).

Example 14: Inconsistency regarding location of rally was minor, where the salient point of alien’s claim of persecution was that he actually attended a political rally, not its specific location. *See Singh v. Ashcroft*, 301 F.3d 1109, 1113 (9th Cir. 2002).

I. Lack of Specific and Detailed Testimony

The Court has held that an Immigration Judge properly questioned the asylum applicant’s credibility based on his “meager and nonspecific” testimony. *See Unuakhulu v. Gonzales*, 416 F.3d 931, 938 (9th Cir. 2005).

NOTE: In *Unuakhulu v. Gonzales*, 416 F.3d 931, 938 (9th Cir. 2005), the Court also noted the alien’s prior fraud conviction.

BUT SEE: 1) Lack of detail of torture in affidavit not sufficient to support adverse credibility finding, where facts were referenced in affidavit and testimony. *See Akinmade v. INS*, 196 F.3d 951, 956 (9th Cir. 1999).

2) A general response to questioning, followed by a more specific, consistent response to further questioning is not a cogent reason supporting an adverse credibility finding. *See Kaur v. Ashcroft*, 379 F.3d 876, 887 (9th Cir. 2004).

Vague assertions (accompanied by multiple inconsistencies) related to single incident of persecution were not minor and supported adverse credibility finding. *See Pal v. INS*, 204 F.3d 935, 938 (9th Cir. 2000).

The level of specificity in an alien's testimony is an appropriate credibility factor. *See Singh-Kaur v. INS*, 183 F.3d 1147, 1153 (9th Cir. 1999).

The Immigration Judge must inform the alien that specificity is required. *See Akinmade v. INS*, 196 F.3d 951, 957 (9th Cir. 1999).

J. Omissions

"[T]he mere omission of details is insufficient to uphold an adverse credibility finding." *See Bandari v. INS*, 227 F.3d 1160, 1167 (9th Cir. 2000).

Mere omission of injury to arm in doctor's letter did not make the letter inconsistent or incompatible with the alien's more detailed testimony, given the burn marks on the alien's arm that corroborated his testimony. *See Singh v. Ashcroft*, 301 F.3d 1109, 1112 (9th Cir. 2002).

BUT SEE: Immigration Judge's adverse credibility finding was properly based on omission of incident that precipitated alien's flight from Guatemala. *See Alvarez-Santos v. INS*, 332 F.3d 1245, 1254 (9th Cir. 2003).

Failure to relate sexual abuse or assault "cannot reasonably be characterized as an inconsistency." *See Paramasamy v. Ashcroft*, 295 F.3d 1047, 1049-53 (9th Cir. 2002); *see also Mousa v. Mukasey*, 530 F.3d 1025, 1027-29 (9th Cir. 2008); *Kebede v. Ashcroft*, 366 F.3d 808, 811 (9th Cir. 2004).

K. Opportunity to Explain

The Immigration Judge must give the asylum applicant an opportunity to explain any discrepancies or inconsistencies that form the basis of a denial of asylum. *See Lei Li v. Holder*, 629 F.3d 1154, 1159 (9th Cir. 2011); *Zi Lin Chen v. Ashcroft*, 362 F.3d 611, 618 (9th Cir. 2004); *see also Jian Guo v. Ashcroft*, 361 F.3d 1194, 1200 (9th Cir. 2004) (finding error in failure to ask alien to explain unclear testimony regarding when he became a Christian); *Kumar v. Gonzales*, 444 F.3d 1043, 1051-52 (9th Cir. 2006) (holding that it was error to neglect to ask alien to explain how photograph of injuries to brother's foot were included in record); *Lin Quan v. Gonzales*, 428 F.3d 883, 886 (9th Cir. 2005) (finding that the Immigration Judge erred by failing to give witness an opportunity to explain his unclear testimony regarding when his wife began practicing Christianity); *Hoque v. Ashcroft*, 367 F.3d 1190, 1195-96 (9th Cir. 2004) (finding error in failure to give alien an opportunity to explain alteration in document).

The Immigration Judge must consider and address explanations given for any discrepancies or inconsistencies that form the basis of a denial of asylum. *See Yan Xia Zhu v. Mukasey*, 537 F.3d 1034, 1039-40 (9th Cir. 2008) (finding error in failure to address alien's explanation for her decision not to see a doctor after alleged attack and rape); *Singh v. Gonzales*, 439 F.3d 1100, 1106 (9th Cir.

2006); *see also* *Ling Zhou v. Gonzales*, 437 F.3d 860, 865 (9th Cir. 2006) (finding error in Immigration Judge’s failure to explain significance of inconsistent addresses on documents); *Chun He Li v. Ashcroft*, 378 F.3d 959, 963 (9th Cir. 2004) (upholding adverse credibility finding where alien’s explanations for discrepancies were addressed); *Kaur v. Ashcroft*, 379 F.3d 876, 887 (9th Cir. 2004) (holding that the agency erred in not considering alien’s explanation for inconsistent spellings of name on Indian passport); *Zi Lin Chen v. Ashcroft*, 362 F.3d 611, 620 (9th Cir. 2004) (finding error in Immigration Judge’s failure to consider alien’s plausible explanation for why her brother did not appear at the hearing on her behalf); *Jian Guo v. Ashcroft*, 361 F.3d 1194, 1201 (9th Cir. 2004) (holding that the agency erred by not addressing alien’s reasonable and plausible explanation); *Hakeem v. INS*, 273 F.3d 812, 816 (9th Cir. 2001) (rejecting adverse credibility finding where alien’s explanation not addressed, but dismissing and denying petition for review on other grounds); *Yi Quan Chen v. INS*, 266 F.3d 1094, 1099-100 (9th Cir. 2001) (finding error in failure to address alien’s explanation), *overruled on other grounds by INS v. Ventura*, 537 U.S. 12 (9th Cir. 2002) (*per curiam*); *Garrovillas v. INS*, 156 F.3d 1010, 1013-14 (9th Cir. 1998) (finding error in failure to address alien’s plausible explanation).

However, an IJ is not required to provide “a protracted written or oral analysis” of the offered explanation. “Nor does the IJ have to engage in multiple iterations of the opportunity to explain.” *Rizk v. Holder*, 629 F.3d 1083, 1088 (9th Cir. 2011).

The court remanded a case for further consideration of the alien’s credibility where neither the Immigration Judge nor the Board had considered the alien’s plausible explanations for some of the alleged deficiencies in his claim “in a reasoned manner,” and where the Immigration Judge had not questioned the respondent, or given him an opportunity to reconcile, certain inconsistencies underlying the adverse credibility finding. *See Soto-Olarte v. Holder*, 555 F.3d 1089, 1092 (9th Cir. 2009). (internal quotation marks and citation omitted). Note that the court also rejected the alternate burden of proof holding, because the Immigration Judge and the Board had failed to take “all of [the alien’s] testimony as true for the purposes of determining his and [his wife’s] eligibility for asylum.” Also note that the court did not require the Board to deem the alien credible on remand. In the instant case, application of the “deemed credible” rule (requiring the Board to treat the alien as credible) would result in an illogical result on remand, as the purpose of the remand was to consider explanations about discrepancies which went to the heart of the alien’s claim. *Id.*

1. Explanation Required

In order for an inconsistency to support an adverse credibility finding (even where the inconsistency goes “to the heart” of the alien’s claim), the alien must be provided an opportunity to “reconcile” the inconsistency. *See Soto-Olarte v. Holder*, 555 F.3d 1089, 1092 (9th Cir. 2009).

2. Explanation **not** Required

NO CASES LISTED.

L. REAL ID Act

While the REAL ID Act lists specified factors that may be considered in determining credibility, the statutory list is not exhaustive. Immigration Judges may thus look to other relevant factors (such as the level of detail in the respondent's testimony) not specifically listed. *Shrestha v. Holder*, 590 F.3d 1034, 1040 (9th Cir. 2010).

Although the REAL ID Act is permissive as to the breadth of factors the Immigration Judge may consider, the "totality of the circumstances" standard does not allow the IJ to "cherry pick" facts that would support an adverse credibility finding while ignoring facts that would undermine such conclusion. *Shrestha v. Holder*, 590 F.3d 1034, 1040 (9th Cir. 2010); *see also Tamang v. Holder*, 598 F.3d 1083, 1093-94 (9th Cir. 2010). Furthermore, an IJ "normally may not rely on nothing more than a vague reference to the 'totality of the circumstances' or recitation of naked conclusions that a petitioner's testimony was inconsistent or implausible, that the petitioner was unresponsive, or that the petitioner's demeanor undermined the petitioner's credibility." The rule requiring an IJ to cite specific, cogent reasons in support of an adverse credibility finding is not altered by the REAL ID Act. *Shrestha v. Holder*, 590 F.3d 1034, 1042-43 (9th Cir. 2010).

In a case arising under the REAL ID Act, the court upheld an adverse credibility finding that appropriately considered the "totality of the circumstances," including the alien's past lies, his striking changes in demeanor during various relevant portions of his testimony, his evasiveness not only while testifying before the Immigration Judge but "throughout [his] interactions with the government agents," and the implausibility of certain portions of his testimony. *See Malkandi v. Mukasey*, 576 F.3d 906, 918-19 (9th Cir. 2009). The court also upheld an adverse credibility finding where the alien's repeated statement that nothing had changed in Nepal was at odds with evidence of record supplied by the alien showing changed political conditions, and that the alien's party is currently in power. *Tamang v. Holder*, 598 F.3d 1083, 1093-94 (9th Cir. 2010).

In *Jibril v. Gonzales*, 423 F.3d 1129, 1133-38 (9th Cir. 2005), the Court did not uphold the adverse credibility finding because any inconsistencies were with regard to trivial or minor facts that did not go to the heart of the his asylum claim, assumptions were speculative, and there was insufficient evidence of adverse demeanor or evasive testimony. However, the Court indicated further (in dicta) that if the asylum application had been controlled by the REAL ID Act, then the record would have sufficiently supported the Immigration Judge's adverse credibility finding based on demeanor and inconsistencies, given that even minor inconsistencies can support an adverse credibility finding under the new standard. *See Jibril v. Gonzales*, 423 F.3d 1129, 1138 n.1 (9th Cir. 2005).

Under the REAL ID Act, the court's review of an Immigration Judge's adverse credibility finding is "significantly restricted." *See Kaur v. Gonzales*, 418 F.3d 1061, 1064 n.1 (9th Cir. 2005) (provisions of REAL ID Act were not applicable here because asylum application was filed before May 11, 2005).

In a case arising under the REAL ID Act, the alien was not found incredible notwithstanding various omissions and inconsistencies in her claim. Instead, relief was denied due to lack of nexus. Affirming the agency's decision on nexus grounds, the Ninth Circuit held that its "body of mixed-motive jurisprudence has now been superseded by [the REAL ID Act,]" and discussed the

REAL ID Act's requirement that a protected ground be "one central reason" for the alien's persecution. *See Parussimova v. Mukasey*, 555 F.3d 734 (9th Cir. 2009).

M. Responsiveness to Questions

Evasive and unresponsive testimony may support an adverse credibility finding. *See Jiamu Wang v. INS*, 352 F.3d 1250, 1256-57 (9th Cir. 2003), *citing Turcios v. INS*, 821 F.2d 1396, 1400 (9th Cir. 1987).

To support an adverse credibility finding based on evasive or unresponsive answers, the particular instances in the record where the petitioner refused to answer questions asked of him must be identified. *See Singh v. Ashcroft*, 301 F.3d 1109, 1113-14 (9th Cir. 2002) (neither Immigration Judge or Board provided examples of when questions had to be repeated and alien's answers were not responsive); *see also Arulampalam v. Ashcroft*, 353 F.3d 679, 686-87 (9th Cir. 2003) (rejecting findings based on manner in which alien delivered testimony, where the record reflected an "insensitivity to [the alien's] cultural and educational background" rather than a lack of credibility on the alien's part).

Characterization of the alien's testimony as "evasive" was appropriate where such characterization was based on "detailed findings supported by concrete examples." *See Malkandi v. Mukasey*, 576 F.3d 906, 919 (9th Cir. 2009) (upholding adverse credibility finding pursuant to REAL ID Act credibility standards).

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

In pre-REAL ID Act cases, an immigration judge "can demand corroborating evidence when he 'has reason to question the applicant's credibility,' and when the evidence requested is 'non-duplicative, material, [and] easily available.'" *Chawla v. Holder*, 599 F.3d 998, 1005 (9th Cir. 2010) (citing *Sidhu v. INS* 220 F.3d 1085, 1092 (9th Cir. 2000)). However, an alien must be provided the opportunity to explain his failure to provide additional corroborating evidence. *Joseph v. Holder*, 600 F.3d 1235, 1246, n. 9 (9th Cir. 2010); *Sidhu v. INS*, *supra* at 1091.

An Immigration Judge may deny an asylum application based on a finding that the documentary evidence is not credible, if the adverse credibility finding is appropriate. *See Dao Lu Lin v. Gonzales*, 434 F.3d 1158, 1162 (9th Cir. 2006); *see also Don v. Gonzales*, 476 F.3d 738, 742 n.7 (9th Cir. 2007) (noting that questionable documentary evidence can support an adverse credibility determination).

If relying on a forensic evaluation discrediting a corroborating document in reaching an adverse credibility finding, an Immigration Judge must, as a matter of due process, afford the respondent the right to confront and cross-examine the author of such report to "test the strength and examine the

scope” of an their factual determinations. *Cinapian v. Holder*, 567 F.3d 1067, 1074-75 (9th Cir. 2009).

The IJ can use lack of corroborating evidence to undermine an alien’s claim only if the alien’s testimony is less than candid. *See Singh v. Gonzales*, 491 F.3d 1019, 1025-27 (9th Cir. 2007) (finding that, without an express credibility finding, an adverse inference from the alien’s refusal to allow access to a Canadian immigration file under his name was in error).

“[T]he fact that an applicant’s evidence is not as complete as might be desired cannot, without more, properly serve as a basis for a finding of lack of credibility.” *See Shah v. INS*, 220 F.3d 1062, 1070 (9th Cir. Cir. 2000) (internal quotation marks omitted), *quoting Akinmade v. INS*, 196 F.3d 951, 956 (9th Cir. 1999).

BUT SEE: 1) Immigration Judge had reason to question asylum applicant’s failure to produce his father as a witness, where there was no other corroborating evidence presented, the father directly witnessed events central to the asylum claim, and the father lived in the U.S. and there was no indication that he was otherwise unavailable. For these reasons, it was reasonable for the Immigration Judge and Board to infer that the father’s testimony would be inconsistent with the applicant’s. *See Sidhu v. INS*, 220 F.3d 1085, 1088-91 (9th Cir. 2000).

2) Adverse credibility finding based on the asylum applicant’s failure to produce easily available evidence corroborating that he is a Jehovah’s Witness, where applicant testified that his problems were because there was proof of his membership in the Jehovah’s Witness Church in its files. *See Mejia-Paiz v. INS*, 111 F.3d 720, 723-24 (9th Cir. 1996).

Where an alien “provides some corroborative evidence to strengthen his case, his failure to produce still more supporting evidence should not be held against him.” *See Hoque v. Ashcroft*, 367 F.3d 1190, 1197 (9th Cir. 2004) (internal quotation marks and citation omitted).

“[W]here an applicant produces credible corroborating evidence to buttress an aspect of his own testimony, an [Immigration Judge] may not base an adverse credibility determination on the applicant’s failure to produce additional evidence that would further support that particular claim.” *See Sidhu v. INS*, 220 F.3d 1085, 1091 (9th Cir. 2000); *see also Zi Lin Chen v. Ashcroft*, 362 F.3d 611, 620-21 (9th Cir. 2004) (concluding that brother’s failure to testify did not support an adverse credibility finding where asylum applicant had presented other evidence corroborating her testimony that she had a child living in China).

Affidavits from relatives or acquaintances living outside the United States are generally not considered to be easily available. *See Ling Zhou v. Gonzales*, 437 F.3d 860, 866 (9th Cir. 2006).

BUT SEE: 1) Affidavits from family members in Nigeria readily available where alien testified that he had continuous contact with Nigeria. *See Unuakhaulu v. Gonzales*, 416 F.3d 931, 938 (9th Cir. 2005).

2) Affidavit from brother living in France easily available. *See Chebchoub v. INS*, 257 F.3d 1038, 1043-45 (9th Cir. 2001).

Medical record from hospital in Kenya is not considered easily available. *See Shire v. Ashcroft*, 388 F.3d 1288,1298-99 (9th Cir. 2004).

Certificate of dismissal from employment (in China) not corroborating evidence that is easily available. *See Wenda Ge v. Ashcroft*, 367 F.3d 1121, 1127 (9th Cir. 2004).

Securing verification of flight records and entry into the United States from INS database is not easily available evidence. *See Shire v. Ashcroft*, 388 F.3d 1288,1298 (9th Cir. 2004).

Lack of corroborating evidence establishing existence of Indian governmental agency did not support an adverse credibility finding, where the Court took administrative notice of the Indian agency's existence. *See Singh v. Ashcroft*, 393 F.3d 903, 905-07 (9th Cir. 2004).

“The REAL ID Act changed the standard governing when a trier of fact may require corroborating evidence from where the evidence is ‘easily available’ to where the evidence is ‘reasonably obtainable,’ and heightened the standard of judicial review to one allowing reversal only where “a reasonable trier of fact would be compelled to conclude that such corroboration is unavailable.” *Shrestha v. Holder*, 590 F.3d 1034, 1047-48 (9th Cir. 2010).

1. If Testimony is Credible

In pre-REAL ID Act cases, the Court does not require corroborating evidence from an asylum applicant whose testimony has been deemed credible. *See Ladha v. INS*, 215 F.3d 889, 900-01 (9th Cir. 2000). However, in the REAL ID Act, “Congress has installed a bias towards corroboration in the statute to provide greater reliability.” *Aden v. Holder*, 589 F.3d 1040, 1045 (9th Cir. 2009); *Singh v. Holder*, 602 F.3d 982, 987 (9th Cir. 2010) (upholding IJ's requiring corroboration of date of entry even where testimony found credible).

The Board's holdings in *Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997), and *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998), conflict with Ninth Circuit law insofar as the Board extended the holdings in those decisions to cases where the applicant's testimony was unrefuted and credible, direct, and specific. *See Ladha v. INS*, 215 F.3d 889, 900-01 (9th Cir. 2000); *see also Singh v. Gonzales*, 439 F.3d 1100, 1106-10 (9th Cir. 2006); *Marcos v. Gonzales*, 410 F.3d 1112, 1118 (9th Cir. 2005); *Kaur v. Ashcroft*, 379 F.3d 876, 889-90 (9th Cir. 2004); *Zi Lin Chen v. Ashcroft*, 362 F.3d 611, 618 (9th Cir. 2004); *Arulampalam v. Ashcroft*, 353 F.3d 679, 688 (9th Cir. 2003); *Cordon-Garcia v. INS*, 204 F.3d 985, 992 (9th Cir. 2000).

BUT SEE: The court held that these holdings were abrogated by the REAL ID Act, which allows the trier of fact to require corroboration even for otherwise credible

testimony. *Aden v. Holder*, 589 F.3d 1040, 1044 (9th Cir. 2009). *See also Singh v. Holder*, 602 F.3d 982, 987 (9th Cir. 2010); *Owino v. Holder*, 575 F.3d 956, 958 (9th Cir. 2009).

If the basis for an adverse credibility finding is not upheld, then corroborating evidence is not required. *See Salaam v. INS*, 229 F.3d 1234, 1239 (9th Cir. 2000).

It was error to require corroborating evidence where there was not an explicit adverse credibility finding. *See Kataria v. INS*, 232 F.3d 1107, 1114 (9th Cir. 2000); *see also Karapetyan v. Mukasey*, 543 F.3d 1118, 1123-24 (9th Cir. 2008).

2. If Testimony is **not** Credible

The Court will uphold an adverse credibility finding “where the Immigration Judge has reason to question the applicant’s credibility, and the applicant fails to produce non-duplicative, material, easily available corroborating evidence and provides no credible explanation for such failure.” *See Unuakhaulu v. Gonzales*, 416 F.3d 931, 938 (9th Cir. 2005); *see also Chebchoub v. INS*, 257 F.3d 1038, 1043-44 (9th Cir. 2001); *Sidhu v. INS*, 220 F.3d 1085, 1092 (9th Cir. 2000).

B. Airport Statements

Adverse credibility finding based on omissions in the asylum applicant’s airport interview statement affirmed, where the record reflected that the interview was “accurately understood and recorded,” and alien did not merely omit information at airport interview, but “affirmatively denied” that he had ever been arrested or mistreated in his homeland. *See Chun He Li v. Ashcroft*, 378 F.3d 959, 962-63 (9th Cir. 2004).

NOTE: The Court “hesitate[s] to view statements given during airport interviews as valuable impeachment sources because of the conditions under which they are taken and because a newly-arriving alien cannot be expected to divulge every detail of the persecution he or she sustained.” In this case, the Court noted that the inspector who conducted the interview testified at the hearing about the procedures used to ensure that interviews were accurately understood and recorded. *See Chun He Li v. Ashcroft*, 378 F.3d 959, 962-63 (9th Cir. 2004).

BUT SEE: Failure to mention instances of abuse or provide more detail in airport statement not substantial evidence in support of adverse credibility finding. *See Singh v. INS*, 292 F.3d 1017, 1021-23 (9th Cir. 2002).

The omission of details during an airport interview is insufficient to support an adverse credibility finding. *See Arulampalam v. Ashcroft*, 353 F.3d 679, 688 (9th Cir. 2003); *see also Singh v. INS*, 292 F.3d 1017, 1021-24 (9th Cir. 2002); *Bandari v. INS*, 227 F.3d 1160, 1167 (9th Cir. 2000).

Reliance on the alien's airport interview as a basis for an adverse credibility determination was improper where the alien's airport statement was not inconsistent with her subsequent testimony, but rather "constitute[d] a vague outline of her more detailed testimony at the hearing," and where the alien had not been asked to elaborate on her statements regarding her problems in her homeland during the airport interview. *See Yan Xia Zhu v. Mukasey*, 537 F.3d 1034, 1040-41 (9th Cir. 2008) (overturning adverse credibility determination based in part on perceived discrepancies between alien's airport statement and her subsequent testimony).

Speculation regarding "what a smuggler would or would not have told [an alien] to say in her airport interview is not substantial evidence supporting" an adverse credibility determination, and the alien's recital of what the smuggler had told her to say at the airport interview did not go to the heart of her claim. *See Yan Xia Zhu v. Mukasey*, 537 F.3d 1034, 1041 (9th Cir. 2008) (reversing adverse credibility finding where all of the grounds underlying the finding either were "based on speculation, [were] contradicted by the record, or [were] minor inconsistencies that [did] not go to the heart of [the alien's] claim") (internal quotation marks and citations omitted).

C. Authentication of Document

"Documents may be authenticated in immigration proceedings through any recognized procedure, such as those required by INS regulations or by the Federal Rules of Civil Procedure." *See Khan v. INS*, 237 F.3d 1143, 1144 (9th Cir. 2001) (internal quotation marks and citation omitted).

The Court has held that an alien's own testimony is a proper method of authenticating documents, and that it was therefore error to require official certification for authentication purposes. *See Vatyant v. Mukasey*, 508 F.3d 1179 (9th Cir. 2007).

Failure to authenticate document, absent other evidence undermining reliability, does not support an adverse credibility finding. *See Ling Zhou v. Gonzales*, 437 F.3d 860, 866 (9th Cir. 2006) (failure to authenticate letters from friends); *see also Shire v. Ashcroft*, 388 F.3d 1288, 1299 (9th Cir. 2004). Lack of authentication of document did not support adverse credibility finding, despite statement in country report of high rate of fake document production in China. *See Jiamu Wang v. INS*, 352 F.3d 1250, 1254 (9th Cir. 2003).

D. Department of State Country Reports

"The [Immigration Judge] may consider generalized reports, such as the State Department's Country Reports, in evaluating a petitioner's [asylum applicant] credibility." *See Xiao Lan Zheng v. Ashcroft*, 397 F.3d 1139, 1143-44 (9th Cir. 2005).

An Immigration Judge may consider State Department reports in evaluating an alien's credibility, insofar as the statements in the reports are used as "supplemental" evidence to discredit "a generalized statement" made by the alien, but "not to discredit specific testimony regarding his individual experience." *See Singh v. Gonzales*, 439 F.3d 1100, 1110-11 (9th Cir. 2006); *see also Chun He Li v. Ashcroft*, 378 F.3d 959, 964 (9th Cir. 2004) (disagreeing with determination that alien's testimony conflicted with statement in country report, but upholding adverse credibility

finding on other grounds); *Chebchoub v. INS*, 257 F.3d 1038, 1043-44 (9th Cir. 2001) (upholding adverse credibility finding where the agency conducted the appropriate “individualized analysis,” and used the country report only to discredit a “general assertion” made by the alien) (internal quotation marks and citation omitted).

BUT SEE: 1) Relying on language in Department of State Country Profile on China that the Chinese routinely submit false documents as basis to question authenticity of alien’s documents is not a legitimate basis to question authenticity of documents where no such language could be found and documents were related to travel. *See Zi Lin Chen v. Ashcroft*, 362 F.3d 611, 618-19 (9th Cir. 2004).

2) Relying on blanket statements in the State Department report regarding detention conditions in China did not satisfy individual analysis requirement. *See Wenda Ge v. Ashcroft*, 367 F.3d 1121, 1126 (9th Cir. 2004).

3) General statement in State Department country report of electoral successes of BJP was not a proper basis to refute alien’s claim of a well-founded fear of persecution. *See Shah v. INS*, 220 F.3d 1062, 1069-70 (9th Cir. 2000). In the aforementioned case, the court found that a report describing general country conditions did not discredit the alien’s testimony of past persecution, given that the State Department’s opinion is irrelevant in cases where the alien has established past persecution by the government. Also, an Immigration Judge cannot “infer that an alien’s otherwise credible testimony is not believable merely because the events he relates are not described in a State Department document.” *See Chand v. INS*, 222 F.3d 1066, 1076-77 (9th Cir. 2000).

4) Reliance on statistics in the 2003 State Department country report re the Sikh population in New Delhi was found to be in error, as such statistics “reveal nothing” about conditions faced by Sikhs in New Delhi in 1998, the year the alien claimed to have suffered persecution. *Chawla v. Holder*, 599 F. 3d 998, 1008-09 (9th Cir. 2010).

E. False Documents, including False Statements

An Immigration Judge’s adverse credibility finding was not supported by substantial evidence where there was no indication that the asylum applicant’s failure to disclose his brother-in-law’s death on visa application was related to his asylum claim. *See Marcos v. Gonzales*, 410 F.3d 1112, 1117-18 (9th Cir. 2005).

BUT SEE: Inconsistencies relating to when and how the aliens obtained their passports supported an adverse credibility finding, where the discrepancies contradicted the asylum applicant’s testimony regarding when he was allegedly detained and whether the passports were obtained illegally by a friend. *See Ceballos-Castillo v. INS*, 904 F.2d 519, 520 (9th Cir. 1990).

An alien’s use of fabricated documents to flee persecution is not a legitimate basis for a negative credibility finding. *See Kaur v. Ashcroft*, 379 F.3d 876, 889 (9th Cir. 2004) (finding that use of false passport to enter country not an appropriate basis for an adverse credibility determination).

Fraudulent documents that go to the heart of the alien's claim of persecution support an adverse credibility finding. *See Khadka v. Holder*, 618 F.3d 996, 1001 (9th Cir. 2010) (questioned newspaper article detailing alien's role in fighting Maoist insurgents, their subsequent threats, and the impact of such threats on the alien and his family went to heart of claim); *Desta v. Ashcroft*, 365 F.3d 741, 745 (9th Cir. 2004) (upholding an adverse credibility finding where alien submitted documents that "may have been fraudulent" to support alleged membership in political organizations, which was the basis for his claim, and where testimony of both alien and his wife contained material inconsistencies).

"Untrue statements by themselves are not reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case." *See Turcios v. INS*, 821 F.2d 1396, 1400 (9th Cir. 1987).

BUT SEE: Adverse credibility finding supported by substantial evidence, where the asylum applicant lied to get a passport and while under oath to immigration officials, traveled under an assumed name, and was convicted of alien smuggling. *See Sarvia-Quintanilla v. INS*, 767 F.2d 1387, 1393 (9th Cir. 1985).

"False statements made to establish the critical elements of the asylum claim" support an adverse credibility finding. *See Akinmade v. INS*, 196 F.3d 951, 956 (9th Cir. 1999), *citing Turcios v. INS*, 821 F.2d 1396, 1400-01 (9th Cir. 1987); *Ceballos-Castillo v. INS*, 904 F.2d 519, 520 (9th Cir. 1990).

An asylum applicant's "180 degree change from a claim of guerrilla persecution to one of government persecution" is not considered an incidental misstatement. *See Ceballos-Castillo v. INS*, 904 F.2d 519, 520 (9th Cir. 1990); *see also Al-Harbi v. INS*, 242 F.3d 882, 889-90 (9th Cir. 2001) (upholding adverse credibility finding based on Iraqi dissident's "propensity to change his story regarding incidents of past persecution").

Misrepresentations made to evade immigration officials or facilitate travel and entry into the United States are considered "'incidental' to the asylum claim," and, thus, do not support an adverse credibility finding. *See Akinmade v. INS*, 196 F.3d 951, 956 (9th Cir. 1999) (rejecting adverse credibility finding grounded in alien's erroneous claim to Canadian citizenship via false statements and presentation of false document); *see also Kaur v. Ashcroft*, 379 F.3d 876, 889 (9th Cir. 2004) (concluding that misrepresentation to immigration officials to enter country and use of false passport to leave India were not proper grounds for adverse credibility finding); *Jian Guo v. Ashcroft*, 361 F.3d 1194, 1201-02 (9th Cir. 2004) (holding that adverse credibility finding was not supported by alien's false statements made to extend his B-1 visitor status).

If anything, asylum applicants' misrepresentations and use of a false passport is consistent with their claims of fleeing persecution because they did so out of fear of returning to their home countries. *See Turcios v. INS*, 821 F.2d 1396, 1400-01 (9th Cir. 1987) (concluding that alien's false statement to immigration officials that he was a Mexican citizen did not support adverse credibility finding).

F. New Evidence on Petition for Review

The court may take into consideration new evidence on appeal “only where (1) the Board considers the evidence; or (2) the Board abuses its discretion by failing to consider such evidence upon the motion of an applicant.” *See Fisher v. INS*, 79 F.3d 955, 964 (9th Cir. 1996) (en banc) (refusing to take administrative notice of State Department report that was not part of the administrative record).

BUT SEE: An exception to the *Fisher* rule is that the court can take judicial notice of an agency’s own record, especially an official form that serves as the basis for the Board’s decision. *See Lising v. INS*, 124 F.3d 996, 998 (9th Cir. 1997) (holding that the court could take judicial notice of alien’s application for naturalization even though it was not part of the record).

TENTH CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

The Court limits its review of the Immigration Judge's or Board's decision to whether it is "supported by reasonable, substantial and probative evidence on the record as a whole." See *Solomon v. Gonzales*, 454 F.3d 1160, 1163-64 (10th Cir. 2006), quoting *Krastev v. INS*, 292 F.3d 1268, 1275 (10th Cir. 2002). In *Solomon*, the Court found that the asylum applicant's possession of an Eritrean passport, which suggests Eritrean rather than Ethiopian citizenship, did not undermine her claim of persecution on account of her perceived Ethiopian nationality; and that failure to present sister's live testimony was not substantial evidence.

An Immigration Judge's adverse credibility finding must be supported by "specific, cogent reasons" for not believing" the asylum applicant's testimony. See *Solomon v. Gonzales*, 454 F.3d 1160, 1163 (10th Cir. 2006), quoting *Wiransane v. Ashcroft*, 366 F.3d 889, 897 (10th Cir. 2004). See also *Unreroro v. Gonzales*, 443 F.3d 1197, 1204 (10th Cir. 2006), quoting *Sviridov v. Ashcroft*, 358 F.3d 722, 727 (10th Cir. 2004).

NOTE: In *Solomon*, the Court lists the following as "inherent problems with credibility determinations in asylum cases:" translation and cultural misunderstandings, the asylum applicants' unfamiliarity with American procedures and wariness of lawyers and officials, ineffective assistance of counsel, acts of deceit and prevarication, bribery or forgery to escape persecution, and difficulty in obtaining documents from country of persecution due to troubled relations.

The asylum applicant's lack of documentary corroboration does not, in itself, constitute substantial evidence to support an adverse credibility determination. See *Solomon v. Gonzales*, 454 F.3d 1160, 1165 (10th Cir. 2006), citing *Wiransane v. Ashcroft*, 366 F.3d 889, 898 (10th Cir. 2004).

When making a credibility determination, the Immigration Judge is required to consider the "totality of the circumstances," and "all relevant factors." See *Unreroro v. Gonzales*, 443 F.3d 1197, 1205 (10th Cir. 2006), quoting section 208(b)(1)(B)(iii) of the Act. See also *Ismaiel v. Mukasey*, 516 F.3d 1198, 1206 (10th Cir. 2008).

NOTE: The Court discusses its scope of review depending on whether there has been a full panel review, single-member affirmance without opinion, or single-member short order by the Board. In *Unreroro*, *supra*, at 1205-06, the Board had issued a single-member short order expressly adopting two of the grounds provided by the Immigration Judge. The Court stated that, if the Board renders a single-member short order, it prefers that the Board state what reasons it deems dispositive, plainly incorporate the Immigration Judge's order by reference, or make clear that it is incorporating one or more of the reasons provided by the Immigration Judge.

“[I]t is within the [Immigration Judge’s] province to make reasonable conclusions based on facts in the record.” See *Chaib v. Ashcroft*, 397 F.3d 1273, 1279 (10th Cir. 2005).

As the Immigration Judge is “in the best position to evaluate an alien’s testimony, his or her credibility determinations are to be given ‘much weight’.” See *Dulane v. INS*, 46 F.3d 988, 998 (10th Cir. 1995), quoting *Estrada v. INS*, 775 F.2d 1018, 1021 (9th Cir. 1985).

The asylum applicant’s testimony alone, if credible, may be enough to satisfy his or her burden of proof. See *Elzour v. Ashcroft*, 378 F.3d 1143, 1152 n.11 (10th Cir. 2004).

In a claim of religious persecution, “a detailed knowledge of Christian doctrine may be irrelevant to the sincerity of an [asylum] applicant’s belief; a recent convert may well lack detailed knowledge of religious custom. See *Yan v. Gonzales*, 438 F.3d 1249, 1255 (10th Cir. 2006).

NOTE: The Court stated that the Immigration Judge provided no other reason, besides minor inconsistencies, for discrediting the alien’s testimony. *Id.* at 1257.

B. Asylum Application

The Court found an IJ’s adverse credibility determination “eminently reasonable” where “it would defy common sense” for the applicant (who was assisted by counsel) “to omit any mention” of his claimed torture “on his application and supplemental letters, particularly when the application explicitly asked for such information.” *Ismaiel v. Mukasey*, 516 F. 3d 1198, 1205 (10th Cir. 2008).

The court disagreed with the Board that the asylum application and testimony were inconsistent. Rather, the court found that the differences were largely an issue of the amount of detail provided. See *Kabba v. Mukasey*, 530 F.3d 1239, 1247 (10th Cir. 2008). The court also noted that the alien submitted the application without the assistance of an attorney, that there were communication problems between the alien and his friend who helped him prepare it, and that the answers were not read back to the alien. The court stated that “the terseness of an application is an insufficient reason for the BIA to reject an [Immigration Judge’s] credibility determination.” *Id.*

The court has upheld an adverse credibility finding based on the asylum applicant’s failure to mention events central to his asylum claim (*i.e.*, that men followed him or threats to his family) in his asylum application or during his asylum interview. See *Suarez-Romero v. Gonzales*, 154 Fed.Appx. 58, 62-63 (10th Cir. 2005), citing *Elzour v. Ashcroft*, 378 F.3d 1143, 1152 (10th Cir. 2004).

Omission from the written asylum application of three significant acts of violence at the hands of Muslims justified Immigration Judge’s adverse credibility finding. See *Panjaita n v. Gonzales*, 172 Fed.Appx. 870, 873 (10th Cir. 2006), citing *Wiransane v. Ashcroft*, 366 F.3d 889, 897 (10th Cir. 2004).

In an unpublished case, the court upheld an adverse credibility finding based on the alien’s failure to mention his wife’s forced abortion and sterilization in his asylum application. The court found that the Immigration Judge gave specific and cogent reasons for disbelieving the alien’s testimony

that he did not know about the CPC procedures because his wife withheld the information to protect him from worrying. *See Xunsheng Li v. Mukasey*, No. 08-9513, 2008 WL 5192630 (10th Cir. Dec. 12, 2008).

C. Asylum Officer Interview

The court has upheld an adverse credibility finding based on the asylum applicant's failure to mention events central to his asylum claim (*i.e.*, that men followed him or threats to his family) in his asylum application or during his asylum interview. *See Suarez-Romero v. Gonzales*, 154 Fed.Appx. 58, 62-63 (10th Cir. 2005), *citing Elzour v. Ashcroft*, 378 F.3d 1143, 1152 (10th Cir. 2004).

D. Conjecture and Speculation

Speculation, conjecture or unsupported personal opinion does not support an adverse credibility finding. *See Uanreroro v. Gonzales*, 443 F.3d 1197, 1205 (10th Cir. 2006), *quoting Chaib v. Ashcroft*, 397 F.3d 1273, 1278 (10th Cir. 2005).

The Court found the Immigration Judge's resolution of the ambiguity as to the asylum applicant's birthplace in favor of Lagos to be reasonable, given that the applicant's mother's affidavit was executed in Lagos, but further found that the "remaining links in the [Immigration Judge's] chain of logic represent unsubstantiated assumptions held together by an incorrect statement of fact." *See Uanreroro v. Gonzales*, 443 F.3d 1197, 1210 (10th Cir. 2006).

The reasons given by the Immigration Judge in support of the adverse credibility finding was not based on evidence in the record, but rather on the ease in which the alien could have relied upon current technology, and the Immigration Judge's view of due process in Algeria "through an American lens." *See Chaib v. Ashcroft*, 397 F.3d 1273, 1279 (10th Cir. 2005).

E. Credibility vs. Plausibility

An adverse credibility finding may be based on implausibility. *See Elzour v. Ashcroft*, 378 F.3d 143, 1152 (10th Cir. 2004).

A finding that the alien's testimony is not plausible "must be supported by substantial evidence *in the record*." *See Uanreroro v. Gonzales*, 443 F.3d 1197, 1207, n. 2 (10th Cir. 2006) (no support in record for Immigration Judge's assumption that Nigerian national's hyphenated name meant that she was married), *quoting Chaib v. Ashcroft*, 397 F.3d 1273, 1278 (10th Cir. 2005)..

Although an Immigration Judge's finding was categorized as an adverse credibility determination, the Court found that, instead, the Immigration Judge questioned the reasonableness of the alien's fear of returning to Algeria, rather than disbelieving the underlying facts that supported that fear. *See Chaib v. Ashcroft*, 397 F.3d 1273, 1278 (10th Cir. 2005)

Finding that testimony is implausible may not be based on speculation, conjecture, or unsupported personal opinion. *See Elzour v. Ashcroft*, 378 F.3d 143, 1153 (10th Cir. 2004), *quoting Wiransane v. Ashcroft*, 366 F.3d 889, 898 (10th Cir. 2004). In *Elzour*, the Court held that the Immigration Judge’s finding that it was implausible that Syria would detain the alien for a prolonged period of time, that Syria would not arrest and detain a “military man” in the manner described by the alien, that any interest that Syria might have had in the alien would have subsided, and that Syria would not have compensated the alien after his first release from prison was not “based on any evidence in the record, but rather on the [Immigration Judge’s] own expectations as to how the Syrian government operated.” *See Elzour v. Ashcroft*, 378 F.3d 1143, 1153-54 (10th Cir. 2004).

NOTE: The Court emphasized that they were not finding the alien credible, but rather that there was insufficient evidence to support the Immigration Judge’s adverse credibility finding.

F. Demeanor

An adverse credibility finding may be based on testimonial demeanor. *See Chaib v. Ashcroft*, 397 F.3d 1273, 1278 (10th Cir. 2005), *citing Elzour v. Ashcroft*, 378 F.3d 143, 1152-53 (10th Cir. 2004).

G. Embellishment

In an unpublished decision, the court upheld an Immigration Judge’s adverse credibility finding where “the record supports the [Immigration Judge’s] conclusion that [asylum applicant] made inconsistent statements over time to bolster his arguments for asylum.” *See Dia v. Gonzales*, 150 Fed.Appx. 883, 886 (10th Cir. 2005), *citing Elzour v. Ashcroft*, 378 F.3d 143, 1152 (10th Cir. 2004).

H. Inconsistent Statements

The alien’s statement that his birth certificate had been preserved by his mother did not directly contradict and was not inconsistent with his earlier testimony that all of his family documents were destroyed. *See Sarr v. Gonzales*, 474 F.3d 783, 793-94 (10th Cir. 2007) (noting that the statements were made through a translator and that the alien had provided an explanation).

An adverse credibility finding may be based on inconsistencies in the alien’s testimony. *See Chaib v. Ashcroft*, 397 F.3d 1273, 1278 (10th Cir. 2005), *citing Elzour v. Ashcroft*, 378 F.3d 143, 1152-53 (10th Cir. 2004).

1. Substantial Inconsistencies

Inconsistencies between the asylum applicant’s 1996 and 2004 asylum hearings about his reunion with family members upon his arrival at a refugee camp, how many teeth he lost after getting hit with a fist, and his arrest considered material. *See Diallo v. Gonzales*, 447 F.3d 1274, 1283 (10th Cir. 2006).

NOTE 1: Citing to *Schroeck v. Gonzales*, 429 F.3d 947, 951 (10th Cir. 2005), the Court declined to dismiss the asylum applicant's appeal because it challenged the Immigration Judge's rather than the Board's decision. *See Diallo v. Gonzales, supra*, at 1279 n.2.

NOTE 2: The Court also upheld that Board's finding that the asylum applicant's 1996 application was fraudulent because he failed to indicate that he had used another name, stating that "[a]sylum seekers must be held accountable for the veracity of statements that they swear to under oath." *Id.* at 1280.

Citing to Ninth Circuit case law, in an unpublished decision, the court held that "To support a negative credibility finding, inconsistencies must go to the heart of a[n] [asylum applicant's] claim." *See Elboukili v. INS*, 125 F.3d 861 (10th Cir. 1997).

2. Minor Inconsistencies

See generally Sarr v. Gonzales, 474 F.3d 783, 794 - 96 (10th Cir. 2007) (regarding year of mother's death which was not central to the alien's claim).

I. Lack of Specific and Detailed Testimony

An adverse credibility finding may be based on lack of sufficiently detailed testimony. *See Chaib v. Ashcroft*, 397 F.3d 1273, 1278 (10th Cir. 2005), *citing Elzour v. Ashcroft*, 378 F.3d 143, 1152-53 (10th Cir. 2004).

J. Omissions

The Court rejected the requirement that an omission go to the "heart of the asylum claim:" "In our view, the significance of an omission must be determined by the context, and rigid rules cannot substitute for common sense." *Ismail v. Mukasey*, 516 F. 3d 1198, 1205 (10th Cir. 2008). *Ismail v. Mukasey, supra*, was cited in an unpublished opinion for this very principle. *See Xunsheng Li v. Mukasey*, No. 08-9513, 2008 WL 5192630, at *3 n.2 (10th Cir. Dec. 12, 2008).

K. Opportunity to Explain

"Although some of the inconsistencies in [the asylum applicant's] story can be attributed to translation problems, it is clear from the transcript of his hearing that he was given the opportunity to explain the inconsistencies but failed to do so to the [Immigration Judge's] satisfaction." *See Diallo v. Gonzales*, 447 F.3d 1274, 1283 (10th Cir. 2006).

In an unpublished decision, the Court upheld the Board's adverse credibility finding where the asylum applicant failed to offer explanations for inconsistencies in the record to the Board. *See Elboukili v. INS*, 125 F.3d 861 (10th Cir. 1997). NOTE: The Court did not consider the explanations provided or other arguments raised for the first time, because they were not offered to the Board. *See id., citing Rivera-Zurita v. INS*, 946 F.2d 118, 120 n.2 (10th Cir. 1991).

NOTE: In a cancellation of removal case, the Court held that the Board did not error in noting the absence of an affidavit or other evidence explaining the alien's "escalating testimony" concerning spousal rape. *See Perales-Cumpean v. Gonzales*, 429 F.3d 977, 985 (10th Cir. 2005).

In an unpublished case, the alien argued that he should be afforded an opportunity to explain an inconsistency noted by the Board. The court found his "contention [to be] without merit. Having been adjudged not credible by the [Immigration Judge, the alien] was 'on notice' to 'explain all the inconsistencies. . . not just the examples pointed to by the [Immigration Judge] to provide a basis for his conclusion.'" *Xunsheng Li v. Mukasey*, No. 08-9513, 2008 WL 5192630 (10th Cir. Dec. 12, 2008), *quoting Pal v. INS*, 204 F.3d 935, 939 (9th Cir. 2000).

1. Explanation Required

NO CASES LISTED.

2. Explanation **not** Required

NO CASES LISTED.

L. REAL ID Act

The Court determined that it has jurisdiction "to review constitutional claims and questions of law" under the REAL ID Act, but not to review "challenges directed solely at the agency's discretionary and factual determinations," which continue to "remain outside the scope of judicial review." *See Ferry v. Gonzales*, 457 F.3d 1117, 1130 (10th Cir. 2006) (holding that Court did not have jurisdiction to review asylum applicant's claim that his pending adjustment of status application qualified as a changed or extraordinary circumstance to excuse his untimely filing of his asylum application), *quoting Diallo v. Gonzales*, 447 F.3d 1274, 1281 (10th Cir. 2006).

The Court has held that it has jurisdiction to review the Board's interpretation of the time limit rule for filing asylum applications under section 106 of the REAL ID Act. *See Diallo v. Gonzales*, 447 F.3d 1274, 1282 (10th Cir. 2006).

In *Yan v. Gonzales*, 438 F.3d 1249, 1251 n.3 (10th Cir. 2006), the court noted the new provisions under the REAL ID Act related to credibility determinations, but did not apply them to this case because the asylum applicant had applied for relief and protection under the Convention Against Torture before the May 11, 2005, effective date.

M. Responsiveness to Questions

NO CASES LISTED.

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

The asylum applicant's testimony that she lacked corroborating documents because she fled "empty-handed" is in line with the Court's recognition of the inherent difficulties a purported refugee may have in obtaining documentation to back up his claims. *See Solomon v. Gonzales*, 454 F.3d 1160, 1165 (10th Cir. 2006).

The Immigration Judge did not have a legitimate basis to find the asylum applicant not credible for her failure to produce decisive and readily available corroborating evidence, given that the applicant had no reason to expect that her fluency in Amharic and affidavit from her half-sister would not suffice to support her claim of Ethiopian nationality, and her explanations for failure to produce documentation were plausible and reasonable. *See Solomon v. Gonzales*, 454 F.3d 1160, 1165 (10th Cir. 2006).

Finding asylum applicant's testimony not credible based on lack of live testimony by her half-sister is not substantial evidence in support of an adverse credibility finding, because the Immigration Judge is essentially arguing that the asylum applicant lacked credibility because she lacked corroborating evidence. *See Solomon v. Gonzales*, 454 F.3d 1160, 1167-68 (10th Cir. 2006) (10th Cir. 2006).

1. If Testimony is Credible

Testimony alone may support a grant of relief, and credible, persuasive testimony may be sufficient without corroboration. *See Unreroro v. Gonzales*, 443 F.3d 1197, 1204 (10th Cir. 2006).

The Court recognizes that "an [Immigration Judge], in his discretion, may request additional evidence or corroboration where appropriate," but the Immigration Judge must give the asylum applicant a reasonable opportunity to comply with additional formalities before making an adverse credibility finding. *See Solomon v. Gonzales*, 454 F.3d 1160, 1168 (10th Cir. 2006) (10th Cir. 2006) (Immigration Judge erred in giving limited value to half-sister's affidavit because she failed to testify and indicate her A# on the affidavit).

2. If Testimony is **not** Credible

B. Airport Statements

NO CASES LISTED.

C. Authentication of Documents

As authentication procedures described in the regulations “generally require attestation of documents by the very government the alien is seeking to escape, courts generally do not view the alien’s failure to obtain authentication as requiring the *rejection* of a document.” *See Yan v. Gonzales*, 438 F.3d 1249, 1256 n.7 (10th Cir. 2006) (emphasis in original).

D. Department of State Country Reports

The Department of State Female Genital Mutilation (F.M.) papers were not substantial evidence that the respondent’s testimony that she would be forced to undergo F.M. before getting married was untrue, given that the F.M. papers relied upon by the Immigration Judge and Board referred to an area other than from the asylum applicant’s, and the papers were outdated. *See Uanreroro v. Gonzales*, 443 F.3d 1197, 1208 (10th Cir. 2006).

“Given that a[n] [asylum applicant’s] testimony alone may suffice to establish her claims for relief,” the country reports “need not contain detailed information corroborating [the asylum applicant’s] account” of the F.M. practice within her ethnic group. The court need only consider whether the information about laws banning F.M. provides “substantial evidence to directly rebut or undermine her claims.” *See Uanreroro v. Gonzales*, 443 F.3d 1197, 1209 (10th Cir. 2006).

E. False Documents, including False Statements

Before an Immigration Judge may base an adverse credibility finding of an alien’s submission of a fraudulent document, there must be a finding that the alien knew the document was forged. *See Kabba v. Mukasey*, 530 F.3d 1239, 1246 (10th Cir. 2008) (citing second and seventh circuit law).

The court does not adopt the Ninth Circuit’s rule that lies told to gain admission cannot serve as a basis for an adverse credibility determination, but rather the court holds that a false statement to an immigration inspector upon entry is a relevant factor to consider. *See Uanreroro v. Gonzales*, 443 F.3d 1197, 1210-11 (10th Cir. 2006).

“[Deception to obtain documents necessary to escape persecution abroad is not substantial evidence of an intent to deceive an American court.” *See Solomon v. Gonzales*, 454 F.3d 1160, 1166-67 (10th Cir. 2006) (Eritrean passport obtained through clandestine channels and missing 13 pages was not substantial evidence of her trying to deceive the Immigration Judge), *citing Uanreroro v. Gonzales*, 443 F.3d 1197, 1211 (10th Cir. 2006).

F. New Evidence on Appeal

The Court did not take into consideration the evidence presented by the asylum applicant for the first time on appeal to the Board, given that the asylum applicant did not follow the agency procedural rules governing the introduction of evidence and counsel never moved to reopen the proceedings for consideration of new evidence. *See Solomon v. Gonzales*, 454 F.3d 1160, 1164 (10th Cir. 2006), *citing Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984).

ELEVENTH CIRCUIT

I. CREDIBILITY

A. Basic Credibility Standards

The court will reverse an Immigration Judge's credibility determination "only if the evidence compels a reasonable fact finder to find otherwise." *See Chen v. U.S. Att'y Gen.*, 463 F.3d 1228, 1231 (11th Cir. 2006), *quoting Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1230 (11th Cir. 2005) (itself quoting *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992)).

NOTE: *Chen* is a REAL ID Act case. Also, as the Board issued a decision in which it adopted the Immigration Judge's reasoning regarding credibility without making additional findings, the court, *citing Al Najjar v. Ashcroft*, 257 F.3d 1262, 1284 (11th Cir. 2001), reviewed the Immigration Judge's decision as if it were the Board's.

An Immigration Judge's adverse credibility finding must be supported by "specific, cogent reasons." *See Chen v. U.S. Att'y Gen.*, 463 F.3d 1228, 1230 (11th Cir. 2006), *citing Forgue v. U.S. Att'y Gen.*, 401 F.3d 1282, 1287 (11th Cir. 2005). In *Chen*, the court found that the inconsistencies and discrepancies between the asylum application, credible fear interview, and testimony provided specific, cogent reasons for the Immigration Judge's adverse credibility finding.

"An applicant may be able to meet his statutory burden by providing uncorroborated but credible testimony, and in the absence of corroborating evidence, an adverse credibility determination may be sufficient to support the denial of an application." *Mohammed v. U.S. Att'y Gen.*, 547 F.3d 1340, 1345 (11th Cir. 2008). The court first found the alien's testimony to be incredible, and second agreed with the Immigration Judge's determination that his corroborative documentary evidence was unreliable.

"[T]he point of an internal inconsistency is that the trier may believe one part of an applicant's story and not believe others. The Immigration Judge and the Board are entitled to credit some parts of [an alien's] testimony and to discredit others." *Mohammed v. U.S. Att'y Gen.*, 547 F.3d 1340, 1348 (11th Cir. 2008).

The court found that the alien's testimony was extensive and sufficiently detailed, and that testimony, by itself, if credible, can support an alien's burden of proof. Thus, the lack of corroboration did not support the Immigration Judge's determination that the alien was unable to establish past persecution. *See Niftaliev v. U.S. Att'y Gen.*, 504 F.3d 1211 (11th Cir. 2007), *vacating* 487 F.3d 834. NOTE: The Immigration Judge did not an adverse credibility finding, but rather found that the alien's testimony was not sufficiently detailed and that there was no corroborative evidence.

Once an adverse credibility finding is made, the burden is on the alien to demonstrate that the Immigration Judge's credibility decision was not supported by "specific, cogent reasons" or was not based on substantial evidence. *See Chen v. U.S. Att'y Gen.*, 463 F.3d 1228, 1231 (11th Cir. 2006)

, quoting *Forgue v. U.S. Att’y Gen.*, 401 F.3d 1282, 1287 (11th Cir. 2005). See also *Mohammed v. U.S. Att’y Gen.*, 547 F.3d 1340, 1345-46 (11th Cir. 2008).

An Immigration Judge’s adverse credibility finding will be reversed “only when the record compels a reversal; the mere fact that the record may support a contrary conclusion is not enough to justify a reversal of the administrative findings.” See *Ruiz v. U.S. Att’y Gen.*, 440 F.3d 1247, 1255 (11th Cir. 2006), quoting *Adefemi v. Ashcroft*, 386 F.3d 1022, 1027 (11th Cir. 2004).

An adverse credibility determination alone may be sufficient to support the denial of an asylum application, “especially if the alien fails to produce corroborating evidence.” See *Chen v. U.S. Att’y Gen.*, 463 F.3d 1228, 1231 (11th Cir. 2006), citing *Forgue v. U.S. Att’y Gen.*, 401 F.3d 1282, 1287 (11th Cir. 2005)

An Immigration Judge must make an explicit adverse credibility finding for it to be dispositive on appeal. See *Yang v. U.S. Att’y Gen.*, 418 F.3d 1198, 1201 (11th Cir. 2005). In *Yang*, the Immigration Judge’s statements that the asylum applicant’s claim was a “ridiculous fabrication” and that his testimony was “extremely inconsistent and [made] absolutely no sense whatsoever,” did not constitute an adverse credibility finding that was dispositive on appeal. The court noted that the Immigration Judge’s decision focused on the insufficiency of the alien’s evidence, not on credibility issues.

The Court has stated that an Immigration Judge’s “extremely detailed” adverse credibility determination alone may be sufficient to support denial of asylum. See *D-Muhumed v. U.S. Att’y Gen.*, 388 F.3d 814, 819 (11th Cir. 2004) (court upheld Immigration Judge’s finding of not plausible the asylum applicant’s testimony that he lived for over 2 years in a house that a rival clan attacked daily without suffering any harm; court also cited an omission in the asylum application), citing *Singh-Kaur v. INS*, 183 F.3d 1147, 1149-53 (9th Cir. 1999).

B. Asylum Application

Various inconsistencies between the asylum application and the applicant’s testimony during removal proceedings related to practice of Falun Gong and incidents prior to departure from China supported adverse credibility finding. See *Chen v. U.S. Att’y Gen.*, 463 F.3d 1228 (11th Cir. 2006).

The Court has upheld adverse credibility findings based on inconsistencies between the asylum applicant’s testimony and application. See *D-Muhumed v. U.S. Att’y Gen.*, 388 F.3d 814, 819 (11th Cir. 2004) (an Immigration Judge’s adverse credibility finding based, in part, on the asylum applicant’s failure to mention in his application that the house he had sought shelter in for two years had been attacked by a rival clan on a daily basis upheld).

C. Asylum Officer Interview

Various inconsistencies between the asylum applicant’s statements during his credible fear interview and testimony during removal proceedings related to practice of Falun Gong and incidents prior to

departure from China supported adverse credibility finding. *See Chen v. U.S. Att’y Gen.*, 463 F.3d 1228 (11th Cir. 2006).

In an unpublished decision, the Court upheld the Immigration Judge’s adverse credibility finding based, in part, on inconsistencies between statements the alien made during her interview with an asylum officer and before the Immigration Judge. The Court did not disturb the Board’s finding of no error in the admission of the asylum officer’s summary of the alien’s asylum interview. The Board noted that the summary provided a clear record of what transpired during the interview and that there was no evidence suggesting that the summary was unreliable. *See Tavera Lara v. U.S. Att’y Gen.*, 188 Fed.Appx. 848 (11th Cir. 2006).

D. Conjecture and Speculation

The court reversed as improper speculation and conjecture an IJ’s conclusion that the respondent’s mother would not violated Chinese law by paying bribes to effect her daughter’s release from jail because the mother worked for the government. *Tang v. U.S. Att’y Gen.*, 578 F.3d 1270, 1278 (11th Cir. 2009).

The court rejected an IJ’s purported “demeanor” determination that the asylum applicant “did not appear to be overtly gay.” The court found this to be not a credibility determination based on demeanor, but rather to rest on “wholly speculative assumptions” untethered from the evidence of record and instead “driven by stereotypes about how a homosexual is supposed to look.” *Todorovic v. US Att’y Gen.*, 621 F.3d 1318, 1326 (11th Cir. 2010).

In unpublished decisions, the Court has held that an adverse credibility finding must be based on evidence in the record and not on speculation or conjecture.

In unpublished decisions, the Court has found that Immigration Judges have made reasonable inferences. *See Tavera Lara v. U.S. Att’y Gen.*, 188 Fed.Appx. 848, 858 (11th Cir. 2006) (reasonable to infer from an asylum applicant’s return to the country of persecution that the applicant does not fear persecution). *See also Chen v. U.S. Att’y Gen.*, 181 Fed.Appx. 951, 959 (11th Cir. 2006) (reasonable to conclude that the prospects of traveling anywhere by air without some form of identification were slim in a post-September 11 world).

E. Credibility vs. Plausibility

The court upheld an adverse credibility finding where the Immigration Judge did not believe that the alien could have lived, for over 2 years, in a house under daily attack without suffering harm, and where the Immigration Judge found it implausible that the alien could have safely left the house without incident to arrange his departure. The Immigration Judge also relied on an omission. *See D-Muhumed v. U.S. Att’y Gen.*, 388 F.3d 814, 819 (11th Cir. 2004).

F. Demeanor

The court rejected an IJ's purported "demeanor" determination that the asylum applicant "did not appear to be overtly gay." The court found this to be not a credibility determination based on demeanor, but rather to rest on "wholly speculative assumptions" untethered from the evidence of record and instead "driven by stereotypes about how a homosexual is supposed to look." *Todorovic v. US Att'y Gen.*, 621 F.3d 1318, 1326 (11th Cir. 2010).

In an unpublished decision, the Court upheld an adverse credibility finding partially based on the Immigration Judge's "observation of [the asylum applicant's] belligerent demeanor and non-responsive or evasive behavior at the hearing." See *Angodo v. U.S. Att'y Gen.*, 166 Fed.Appx. 432, 440 (11th Cir. 2006).

G. Embellishment

"Indications of reliable testimony include consistency on direct examination, consistency with the written application, and the absence of embellishments." See *Ruiz v. U.S. Att'y Gen.*, 440 F.3d 1247, 1255 (11th Cir. 2006), citing *Matter of B-*, 21 I&N Dec. 66, 70 (BIA 1995).

H. Inconsistent Statements

The court found an adverse credibility finding to be supported by inconsistencies and discrepancies. See *Shkambi v. U.S. Att'y Gen.*, 584 F.3d 1041 (11th Cir. 2009); *Mohammed v. U.S. Att'y Gen.*, 547 F.3d 1340, 1345-46 (11th Cir. 2008). NOTE: There was a dissent in this case.

The court has upheld an adverse credibility finding where the asylum applicant's testimony conflicted with his answer to interrogatories, his affidavit, deposition testimony, and other documentary evidence. See *Dailide v. U.S. Att'y Gen.*, 387 F.3d 1335, 1343 (11th Cir. 2004).

1. Substantial Inconsistencies

The Immigration Judge's concerns regarding the asylum applicant's testimony concerning "key elements of the claim," which were not sufficiently rebutted, supported an adverse credibility finding. See *Nreka v. U.S. Att'y Gen.*, 408 F.3d 1361, 1369 (11th Cir. 2005).

2. Minor Inconsistencies

In an unpublished decision, the court recognized the position of the Third and Ninth Circuits that inconsistencies must relate to the heart of the asylum claim, but stated that "we [the court] have never adopted that test." See *Li v. U.S. Att'y Gen.*, 194 Fed.Appx. 886, 887 (11th Cir. 2006).

In an unpublished decision the court stated, "Although we have not directly addressed the issue, two circuits indicate that an adverse credibility determination based on inconsistencies must involve inconsistencies relating to the basis of the alleged fear of persecution (i.e., "the

heart of the asylum claim”) and that minor inconsistencies about collateral matters or unimportant facts will not support an adverse credibility finding. *See Gao v. Ashcroft*, 299 F.3d 266, 272 (3d Cir.2002); *Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir.2001). However, neither circuit cites any statute or regulation for this demarcation in credibility determinations. In non-immigration cases, this circuit has not required a witness's inconsistent testimony to relate to the heart of the claim before the factfinder can disbelieve that witness. *See, e.g., Conroy v. Abraham Chevrolet-Tampa, Inc.*, 375 F.3d 1228, 1231 (11th Cir.2004).” The court did not need to resolve the issue as the alien’s discrepancies were considered “material.” *Drejaj v. U.S. Att’y Gen.*, 192 Fed.Appx. 847, 855 n.4 (11th Cir. 2006).

I. Lack of Specific and Detailed Testimony

The court found that the alien’s testimony was extensive and sufficiently detailed, and that testimony, by itself, if credible, can support an alien’s burden of proof. Thus, the lack of corroboration did not support the Immigration Judge’s determination that the alien was unable to establish past persecution. *See Niftaliev v. U.S. Att’y Gen.*, 504 F.3d 1211 (11th Cir. 2007), *vacating* 487 F.3d 834. NOTE: The Immigration Judge did not make an adverse credibility finding, but rather found that the alien’s testimony was not sufficiently detailed and that there was no corroborative evidence.

In an unpublished decision, the court upheld an Immigration Judge’s adverse credibility finding based on the respondent’s failure to identify his political activities, injuries sustained during a beating and detention, the reason behind a demonstration, and details relating to his being stopped and beaten by masked men. *See Mujaj v. U.S. Att’y Gen.*, 177 Fed.Appx. 859 (11th Cir. 2006).

J. Omissions

The court upheld the Immigration Judge’s finding that the asylum applicant’s testimony that he could not relocate to another part of Colombia was not plausible, where the applicant failed to mention in his complaint to Colombian police that he believed that he could not relocate, he testified that the FARC told him to leave the region, and other reasons. *See Ruiz v. U.S. Att’y Gen.*, 440 F.3d 1247, 1255 (11th Cir. 2006).

The court upheld an Immigration Judge’s adverse credibility finding where the asylum applicant, who claimed persecution as a result of his political activities and serving as an election monitor, had not mentioned the following facts in his asylum application: (1) he had been an election monitor; (2) he had prevented Fanmi Lavalas members from committing election fraud; (3) he had been attacked with acid; or (4) his son had been severely beaten by members of the Fanmi Lavalas. *See Forgue v. U.S. Att’y Gen.*, 401 F.3d 1282, 1287 (11th Cir. 2005). The court also stated that the alien did not produce any corroborative evidence.

K. Opportunity to Explain

The Court has not directly addressed in a published decision whether the Immigration Judge must provide an asylum applicant an opportunity to explain discrepancies that form the basis of an adverse credibility finding. In an unpublished decision, the Court upheld an Immigration Judge's adverse credibility finding where the alien had failed to include an arrest in either his sworn statement or written asylum application and failed to provide an adequate explanation for the omission. See *Drejaj v. U.S. Att'y Gen.*, 192 Fed.Appx. 847 (11th Cir. 2006).

The Court has held that an Immigration Judge must provide an alien sufficient opportunity to account for any discrepancies or implausible aspects of his or her claim before finding that the alien has filed a frivolous asylum application pursuant to section 208(d)(6) of the Immigration and Nationality Act. See *Scheerer v. U.S. Att'y Gen.*, 445 F.3d 1311, 1317 (11th Cir. 2006).

The Court, in rejecting an asylum applicant's contention that the Immigration Judge failed to give him an opportunity to explain the inconsistencies in the record, further noted that the "[asylum applicant] - not the [Immigration Judge] - bears the burden of proving eligibility for asylum." *Ruiz v. U.S. Att'y Gen.*, 440 F.3d 1247, 1256 (11th Cir. 2006), citing *D-Muhumed v. U.S. Att'y Gen.*, 388 F.3d 814, 818 (11th Cir. 2004). But the court also noted in *Ruiz v. U.S. Att'y Gen.*, *supra*, that the alien had been provided an opportunity to explain.

1. Explanation Required

NO CASES LISTED.

2. Explanation **not** Required

NO CASES LISTED.

L. REAL ID Act

The court acknowledged that the REAL ID Act "granted more latitude to IJs in making credibility determinations in applications for asylum and withholding of removal filed...after May 11, 2005." *Xia v. US Att'y Gen.*, 608 F.3d 1233, 1239-40 (11th Cir. 2010).

In *Chen v. U.S. Att'y Gen.*, 463 F.3d 1228, 1233 (11th Cir. 2006) , the court applied the new provisions under the REAL ID Act related to credibility determinations. In rejecting the asylum applicant's arguments that the inconsistencies and discrepancies relied upon by the Immigration Judge were "trivial" and "irrelevant to the dispositive issues," the court, citing to the Act, noted that the applicant failed to take into consideration "the amendment to section 208(b)(1)(B)(iii) [of the Act,] which provides that in considering the totality of the circumstance, 'the trier of fact may base a credibility determination on . . . any inaccuracies or falsehoods in [the applicant's] statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.'"

In REAL ID Act case, the dissent disagreed with the majority upon considering the alien's testimony in its "totality." See *Mohammed v. U.S. Att'y Gen.*, 547 F.3d 1340, 1354 (11th Cir. 2008).

M. Responsiveness to Questions

NO CASES LISTED.

II. CORROBORATING EVIDENCE

A. Basic Corroborating Evidence Standards

The court, citing to 8 C.F.R. § 208.13, stated that although the Immigration Judge was obligated to consider the alien's documentary evidence, he was "under no obligation to credit it or assign it decisive weight." *Mohammed v. U.S. Att'y Gen.*, 547 F.3d 1340, 1347 (11th Cir. 2008). BUT NOTE: The dissent criticizes the majority for effectively dooming the alien's claim based on the adverse credibility finding where the alien submitted "other significant" documentary evidence to support his claim.

"[A]n adverse credibility finding does not alleviate [the Immigration Judge's] duty to consider other evidence produced by an asylum applicant." *See Ruiz v. U.S. Att'y Gen.*, 440 F.3d 1247, 1255 (11th Cir. 2006), *quoting Forgue v. U.S. Att'y Gen.*, 401 F.3d 1282, 1287 (11th Cir. 2005).

1. If Testimony is Credible

"If an alien's testimony is credible, it may be sufficient, without corroboration, to satisfy his burden of proof in establishing his eligibility for relief from removal." *See Chen v. U.S. Att'y Gen.*, 463 F.3d 1228, 1231 (11th Cir. 2006), *citing Forgue v. U.S. Att'y Gen.*, 401 F.3d 1282, 1287 (11th Cir. 2005).

2. If Testimony is **not** Credible

"The weaker an [alien's] testimony, the greater the need for corroborative evidence." *Yang v. v. U.S. Att'y Gen.*, 418 F.3d 1198, 1201 (11th Cir. 2005), *citing Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

In an unpublished decision, the Court held that the Immigration Judge did not error in requiring corroborating evidence, where the Immigration Judge identified problems with the applicant's testimony. *See Lesama de Rodriguez v. U.S. Att'y Gen.*, 133 Fed.Appx. 608 (11th Cir. 2005). NOTE: There is no reference to an adverse credibility finding in this decision.

B. Airport Statements

The court observed that, as noted by other circuits, airport statements may be less reliable than later hearings where full due process is accorded; omissions (as opposed to contradictions) in airport

statements should not form the exclusive basis of an adverse credibility finding. *Tang v. U.S. Att’y Gen.*, 578 F.3d 1270, 1279 (11th Cir. 2009).

In an unpublished decision where the asylum applicant challenged the Immigration Judge’s reliance on statements the applicant had made during his airport interview, the Court distinguished the applicant’s case from three cases from other circuits that have held that airport interviews, standing alone, are insufficient to sustain an adverse credibility finding. The Court noted that the Immigration Judge did not rely solely on inconsistencies in the airport interview, but also on the credible fear interview and inconsistent statements at the hearing, and that the alien’s testimony on how he traveled to the United States was highly implausible. Therefore, the Immigration Judge’s adverse credibility finding was reasonable and supported by substantial evidence. *See Chen v. U.S. Att’y Gen.*, 181 Fed.Appx. 951, 959-60 (11th Cir. 2006).

In unpublished decisions, the Court has upheld adverse credibility findings based on the asylum applicant’s failure to mention material facts during airport and credible fear interviews. *See Wang v. U.S. Att’y Gen.*, 174 Fed.Appx. 530 (11th Cir. 2006) (adverse credibility finding based on Chinese national’s failure to mention abortion to male immigration officer during interview upon arriving, particularly given her failure to provide corroboration). *See also Jasem v. U.S. Att’y Gen.*, 157 Fed.Appx. 153 (11th Cir. 2005) (adverse credibility finding based on alien’s failure to mention detention during credible-fear interview or in his asylum application).

C. Authentication of Document

In an unpublished decision, the Court upheld that the Immigration Judge’s adverse credibility finding was further supported by a forensic report that questioned the authentication of two of the government documents submitted by the asylum applicant. *See Sallaku v. U.S. Att’y Gen.*, 143 Fed.Appx. 276 (11th Cir. 2005).

D. Department of State Country Reports

The Board may rely on State Department reports. *See Reyes-Sanchez v. U.S. Att’y Gen.*, 369 F.3d 1239, 1243 (11th Cir. 2004). However, such reports “are only useful to the extent that they comment upon or are relevant to the highly specific question of whether *this individual* suffered persecution.” *Tang v. U.S. Att’y Gen.*, 578 F.3d 1270, 1280 (11th Cir. 2009) (quoting *Chen v. U.S. INS*, 359 F.3d 121, 131 (2d Cir. 2004)). The court thus found error in the IJ’s discrediting the respondent’s claim that her 8-member house church was targeted based on the State Department Report’s *general* statement that house churches were *typically* targeted when they became too large. *Id.* “An IJ may not select portions of a State Department Country Report that undermine an asylum applicant’s claim while ignoring those portions that support the claim.” *Xia v. US Att’y Gen.*, 608 F.3d 1233, 1239 (11th Cir. 2010); *Tang v. U.S. Att’y Gen.*, 578 F.3d 1270, 1280 (11th Cir. 2009).

In an unpublished decision, the Court upheld the Immigration Judge’s adverse credibility finding where the respondent’s description of political persecution by a reconstituted Communist Party disguised as the Socialist Party was inconsistent with the Asylum Profile and Country Report. *See Fasho v. U.S. Att’y Gen.*, 182 Fed.Appx. 932 (11th Cir. 2006). *See also Rama v. U.S. Att’y Gen.*,

147 Fed.Appx. 905 (11th Cir. 2005) (adverse credibility finding upheld where asylum applicant's testimony that he was persecuted by SHIK in 2001 was contradicted by statements in Asylum Profile and Country Reports).

E. False Documents, including False Statements

In *Alim v. Gonzales*, 446 F.3d 1239, 1255-56 (11th Cir. 2006), the Court upheld an Immigration Judge's adverse credibility finding based in part on the alien having committed multiple acts of fraud, including exiting his native country of Syria illegally and entering the United States on a false passport.

F. New Evidence on Appeal

NO CASES LISTED.

BOARD OF IMMIGRATION APPEALS

See Matter of J-Y-C-, 24 I&N Dec. 260 (BIA 2007) (discussing credibility standards under the REAL ID Act).

See Matter of J-B-N- & S-M-, 24 I&N Dec. 208 (BIA 2007) (providing that in cases arising under the REAL ID Act, where the alleged persecutor has a “mixed motive” for persecuting the alien, the alien must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be “at least one central reason” for the claimed persecution).

See Matter of S-B-, 24 I&N Dec. 42 (BIA 2006) (stating that applications filed on or after May 11, 2005, are subject to the credibility provisions of the REAL ID Act).

See Matter of A-H-, 23 I&N Dec. 774, 786 (A.G. 2005) (stating that “[m]uch of the Immigration Judge’s assessment of respondent’s credibility related to his demeanor and sincerity as a witness[, and that such] assessments of testimonial credibility are uniquely within the ken of the Immigration Judge”).

See Matter of R-S-H-, 23 I&N Dec. 629, 641 (BIA 2003) (holding that where the Immigration Judge makes detailed findings in support of an adverse credibility finding, the alien is “obligated on appeal to challenge those findings in a specific manner. It is not enough to challenge them only in generalities”).

See Matter of S-A-, 22 I&N Dec. 1328, 1332 (BIA 2000) (rejecting an adverse credibility finding that was not supported by specific, cogent reasons; noting that the Board not only encourages, but requires, corroborative evidence, where available; and finding that country reports corroborated alien’s testimony).

See Matter of Y-B-, 21 I&N Dec. 1136, 1139 (BIA 1998) (holding that the weaker the alien’s testimony, the greater the need for corroborative evidence).

See Matter of A-S-, 21 I&N Dec. 1106 (BIA 1998) (observing that the Board defers to an adverse credibility finding when discrepancies and omissions are actually present, they provide specific and cogent reasons for disbelieving the alien, and the alien does not offer any convincing explanations; further holding that an Immigration Judge’s demeanor finding is entitled to deference).

See Matter of O-D-, 21 I&N Dec. 1079 (BIA 1998) (finding that fraudulent identification document discredits the critical elements of identity and nationality, and absent explanation or rebuttal may indicate an overall lack of credibility). BUT SEE: *Kabba v. Mukasey*, 530 F.3d 1239, 1246 (10th Cir. 2008); *Corovic v. Mukasey*, 519 F.3d 90, 97-98 (2d Cir. 2008) *Hanaj v. Gonzales*, 446 F.3d 694, 698-99 (7th Cir. 2006); *Yeimane-Berhe v. Ashcroft*, 393 F.3d 907, 911 (9th Cir. 2004) (holding that in order for the submission of a fraudulent document to support an adverse credibility finding, the alien must have known about the fraud).

See Matter of S-M-J, 21 I&N Dec. 722 (BIA 1997) (holding that where it is reasonable to expect corroborating documents, they should be provided or an explanation given for their absence). BUT SEE: *Ladha v. INS*, 215 F.3d 889, 898-01 (9th Cir. 2000) (disapproving of *Matter of Matter of S-M-J*).

See Matter of S-S, 21 I&N Dec. 121 (BIA 1995) (concerning adverse credibility findings based on interviews and indicia of reliability).

See Matter of B-, 21 I&N Dec. 66 (BIA 1995) (holding that plausible, detailed, consistent, unembellished testimony may support a finding of credibility).