No. 12-173

In the Supreme Court of the United States

PULCHERIE TEKEU DJADJOU, AKA PULCHERIE DJADJOU, PETITIONER

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether there was substantial evidence to support the agency's finding that petitioner did not provide sufficient credible evidence in support of her applications for asylum, withholding of removal, and protection under the Convention Against Torture.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-40a) is reported at 662 F.3d 265. The decisions of the Board of Immigration Appeals (Pet. App. 41a-49a) and the immigration judge (Pet. App. 50a-72a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 5, 2011. A petition for rehearing was denied on March 9, 2012 (Pet. App. 1a). On May 30, 2012, Chief Justice Roberts extended the time within which to file a petition for a writ of certiorari to and including August 6, 2012, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, provides that the Secretary of Homeland Security or the Attorney General may, in her or his discretion, grant asylum to an alien who demonstrates that she is a "refugee." 8 U.S.C. 1158(b)(1)(A). The INA defines a "refugee" as an alien "who is unable or unwilling to" return to her country of origin "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. 1101(a)(42)(A).

In addition to the discretionary relief of asylum, mandatory withholding of an alien's removal is available "if the Attorney General decides that the alien's life or freedom would be threatened in [the country of removal] because of the alien's race, religion, nationality, membership in a particular social group, or political opinion" and that the alien is not subject to any bar against withholding of removal. 8 U.S.C. 1231(b)(3)(A)-(B).

An applicant bears the burden of establishing that she is a refugee eligible for asylum or that her life or freedom would be threatened so as to warrant withholding of removal. 8 C.F.R. 208.13(a), 208.16(b), 1208.13(a), 1208.16(b). The applicant may show that she is entitled to those forms of relief or protection by establishing a well-founded fear (for asylum) or clear probability (for withholding) of future persecution. 8 C.F.R. 208.13(b), 208.16(b)(2), 1208.13(b), 1208.16(b)(2). A rebuttable presumption of the necessary risk of future persecution arises when an applicant establishes past persecution. 8 C.F.R. 208.13(b)(1), 208.16(b)(1)(i), 1208.13(b)(1), 1208.16(b)(1)(i). The testimony of the applicant, if credible, may be sufficient to sustain her burden of proof

without corroboration. 8 C.F.R. 208.13(a), 208.16(b), 1208.13(a), 1208.16(b).

A person who is present in the United States and fears torture if removed to a particular country may obtain protection under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85. The United States' obligations under Article 3 of the CAT are implemented in various agency regulations, including Department of Justice regulations governing removal proceedings. See 8 C.F.R. 1208.16-1208.18; see also Foreign Relations Authorization Act, Fiscal Years 1998 and 1999, Pub. L. No. 105-277, Div. G, Subdiv. B, § 2242, 112 Stat. 2681-822 (8 U.S.C. 1231 note). To obtain protection under the CAT, an alien must demonstrate that it is more likely than not that she would be tortured in the country of removal. 8 C.F.R. 1208.16(c)(3).

2. Petitioner is a native and citizen of Cameroon who entered the United States in 2002 as a nonimmigrant visitor and stayed longer than authorized. Pet. App. 3a. In 2003, petitioner filed an application for asylum, which was referred to an immigration judge (IJ) when petitioner was placed in removal proceedings. *Id.* at 3a, 52a. Petitioner admitted the factual allegations in the Notice to Appear and conceded that she was removable under 8 U.S.C. 1227(a)(1)(B) as an alien who has remained in the United States for a longer time than authorized. Pet. App. 3a, 50a-51a. Petitioner renewed her application for asylum, which was deemed to include requests for withholding of removal and protection under the CAT. *Id.* at 3a, 52a.

In support of her application, petitioner testified that she had been harmed by the Cameroonian government, and faced future harm, on account of her activities in support of opposition political parties. Pet. App. 4a. Petitioner stated that she joined one opposition party, the Social Democratic Front (SDF), in 1991. *Id.* at 5a, 53a. She stated that she left that party in 1996, then joined the Southern Cameroons National Council (SCNC), another opposition party, in 1997. *Id.* at 5a-6a, 53a-55a. Petitioner testified that she was arrested and detained in 1992 because of her activities for the SDF, and again in 1997, 2000, and 2001 because of her activities with the SCNC. *Id.* at 5a-7a, 56a-61a. Petitioner testified that she was beaten, raped, and tortured during those detentions. *Ibid.*

Petitioner submitted documentary evidence in support of her claims. That evidence included: (1) SDF and SCNC membership cards; (2) two letters from the SDF in Cameroon, one indicating that petitioner was a member from 1991 to 1996, that she was the ex-secretary of propaganda in charge of youth affairs, and that government officials were looking for her; the other indicating that petitioner had been an active member since 1991 and had suffered "great tortures"; (3) an affidavit from Derrick Njoh, Chairman of the SCNC in the United States (SCNC-USA), in which he attested that through telephone calls with an SCNC official in Cameroon who had reviewed SCNC records, Njoh had confirmed that petitioner has been a member of SCNC since 1997, has handed out flyers and participated in demonstrations, and was arrested and detained in 2000; (4) a 2000 "convocation" from the Cameroon government inviting petitioner to present herself to the police station in Bangangté; (5) a 2002 telegram from the Cameroon gov-

ernment seeking petitioner for an "illegal political meeting" and requesting that she be brought to the local prosecutor's office; (6) a March 11, 2002 eviction notice for petitioner's Cameroonian business; and (7) letters and affidavits from petitioner's family and friends. Pet. App. 8a-10a, 86a-93a, 110a-113a, 119a-126a; see also C.A. J.A. 369-371, 380, 563-564, 617-622, 642, 649-651, 677-678. Petitioner also presented the testimony of Howard Njeck, Vice Chairman of the SCNC-USA, who confirmed the contents of Njoh's affidavit. Pet. App. 9a, 62a-63a, 94a-109a.

The IJ denied petitioner's applications. Pet. App. 50a-72a. The IJ found that petitioner had failed to testify credibly in support of her applications. *Id.* at 64a. The IJ explained that the SCNC affidavit conflicted with petitioner's testimony because it failed to mention that she had been elected secretary of youth of the Macolo Comcona and Cariare wards, and it omitted any mention of three arrests. *Id.* at 64a-65a. The IJ further noted that none of the documents on which the affidavit relied had been provided to the agency. *Id.* at 65a. The IJ explained that one of the SDF letters indicated that petitioner is currently an active member of SDF, which conflicted with the other SDF letter and petitioner's testimony that she left the SDF in 1996. *Id.* at 66a. The IJ also noted that one SDF letter omitted any mention of petitioner's leadership role as secretary of propaganda in charge of youth affairs, while the other letter omitted any mention of petitioner having been arrested or tortured. *Id.* at 66a-67a. The IJ further observed that petitioner's own written statement did not mention the leadership position with the SCNC that she later claimed. *Id.* at 65a.

The IJ declined to credit the membership card from the SCNC because it misspelled the name of the party, which petitioner had identified as a "printing error." Pet. App. 66a. The IJ further determined that there was a "significant inconsistency" between petitioner's claim that she left Cameroon for the United States on March 11, 2002, and the 2002 eviction notice, which indicated that petitioner was "residing in [the city of] Yaoundé" on that date because she personally received the notice but refused to sign for it. *Id.* at 67a. Finally, the IJ found that petitioner's 1999 return to Cameroon after a business trip "undermines her credibility that she was arrested and harmed and brutalized by the government" because it meant that she "voluntarily returned to Cameroon after having been arrested and severely mistreated according to her testimony." *Id.* at 67a-68a. The IJ concluded that petitioner had failed to authenticate or provide a persuasive chain of custody for the government documents submitted in support of her claims, specifically the 2000 convocation and the 2002 telegram requesting her arrest. *Id.* at 68a. The IJ declined to give much weight to the documents submitted by petitioner's family and friends because those documents were not objective. *Id.* at 69a.

The IJ concluded that, "[b]ased on the totality of evidence," petitioner "failed to meet her burden in establishing past persecution or * * * a well-founded fear of future persecution should she return to Cameroon." Pet. App. 64a, 69a-70a. The IJ also rejected petitioner's claimed fear of future persecution on account of her political activities in the United States, finding no evidence that the Cameroonian government was aware of her activities or would seek to harm her on that basis. *Id.* at 70a. The IJ further concluded that petitioner had failed

to establish the more demanding standard for withholding of removal and that petitioner's evidence was insufficient to establish her eligibility for CAT protection. *Ibid.*

3. The Board of Immigration Appeals (the Board) dismissed petitioner's appeal. Pet. App. 41a-49a. The Board found no clear error in the IJ's adverse credibility finding with regard to petitioner's claims of past persecution. *Id.* at 46a. The Board agreed with the IJ's determination that petitioner failed to present reasonably available corroborating evidence that was sufficiently "authenticated," "objective," and "reliable," faulting her documentary evidence for one or more of those problems. *Id.* at 46a-47a. The Board agreed with the IJ that Njeck's testimony was not entitled to much weight because he had no firsthand knowledge of petitioner's alleged mistreatment. *Id.* at 46a. The Board further agreed that petitioner had failed to demonstrate a well-founded fear of persecution on account of her political activities in the United States. *Id.* at 47a.

4. a. The court of appeals denied a petition for review. Pet. App. 1a-30a. The court concluded that the IJ's adverse credibility finding, sustained by the Board, was supported by substantial evidence. *Id.* at 3a. The court highlighted two inconsistencies or omissions on which the IJ and the Board appropriately relied to conclude that petitioner was not credible: (1) the evidence that the eviction notice was personally served on petitioner at her store on March 11, 2002, when she claimed to be in hiding or fleeing to the United States; and (2) petitioner's failure to mention her claimed leadership role in the SCNC in the statement submitted with her asylum application. *Id.* at 18a-21a.

The court of appeals acknowledged that, "[d]espite an adverse credibility determination, applicants for asylum can establish past persecution through independent evidence." Pet. App. 21a. The court further stated that "[w]here independent evidence apart from the applicant's testimony and application statement exists, the agency must consider whether it is sufficient to establish a claim of past persecution," and "[t]he agency may not ignore such evidence and reject the claim solely on the basis of the adverse credibility determination." *Ibid.* Accordingly, the court reviewed the independent evidence that petitioner had presented.

The court of appeals concluded that the agency properly declined to credit the affidavits and letters from petitioner's family and friends because they lacked objectivity. Pet. App. 22a. The court further concluded that the agency properly declined to credit Njeck's testimony and Njoh's affidavit, which were based on multiple levels of hearsay and lacked other indicia of reliability. *Id.* at 22a-26a. The court concluded that the IJ appropriately refused to credit the SDF letters because the letters provided inconsistent timeframes for petitioner's membership, one letter omitted any mention of petitioner's asserted torture in Cameroon, and the other omitted any mention of petitioner's leadership position within the SDF. *Id.* at 27a-28a.

With regard to the 2000 convocation and the 2002 telegram, the court of appeals concluded that the agency erred in rejecting those documents as inauthentic or unreliable but concluded that any error was harmless because, even with those documents and the remaining unrejected independent evidence, "it is clear that insufficient independent evidence existed to establish past persecution." Pet. App. 28a-30a. The court explained

that the creditable evidence established only that petitioner "was a member of opposition organizations whose members have suffered persecution in Cameroon," but not "that she was among those persecuted." *Id.* at 30a.

b. Judge Wynn dissented. Pet. App. 30a-40a. He agreed with the majority that substantial evidence in the record supported the agency's adverse credibility finding, although he would have relied solely on the inconsistency between the eviction notice and petitioner's testimony. *Id.* at 32a-34a. Judge Wynn concluded, however, that petitioner had presented sufficient independent evidence apart from her own testimony to establish past persecution. *Id.* at 40a. Judge Wynn believed that the agency had not provided "specific, cogent reasons" for rejecting Njeck's testimony or Njoh's affidavit. *Id.* at 37a-39a.

ARGUMENT

Petitioner contends (Pet. 22-24) that she provided sufficient credible evidence in support of her applications for asylum, withholding of removal, and protection under the CAT. The court of appeals correctly rejected that fact-bound argument, and its decision does not conflict with any decision of this Court or another court of appeals. Further review is unwarranted.

1. a. An agency's factual findings are reviewed under the highly deferential substantial evidence standard. *INS* v. *Elias-Zacarias*, 502 U.S. 478, 481 (1992). Under that standard, which is codified in the INA, "the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. 1252(b)(4)(B). Accordingly, a reviewing court cannot reverse the agency's overall decision that an applicant is ineligible for asylum unless the court determines that the applicant's evidence "was

such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed." *Elias-Zacarias*, 502 U.S. at 481 (citing *NLRB* v. *Columbian Enameling & Stamping Co.*, 306 U.S. 292 (1939)).

b. In petitioner's case, the court of appeals reviewed the agency's factual findings under the proper standard and correctly concluded that those findings were supported by substantial evidence. The court concluded that the agency's adverse credibility finding was supported in particular by one inconsistency and one omission—the eviction notice indicating that petitioner was present at her store in Cameroon (and not in hiding or fleeing to the United States) on March 11, 2002, and petitioner's failure to mention her purported leadership role within the SCNC in her asylum application. Pet. App. 18a-21a.

Furthermore, the court correctly concluded that substantial evidence supported the agency's determination that certain other evidence that petitioner submitted was not sufficiently reliable to support relief. Specifically, the agency properly refused to credit the affidavits and letters from petitioner's family and friends because they lacked objectivity, Pet. App. 22a; the agency properly refused to credit Njeck's testimony and Njoh's affidavit because those witnesses lacked personal knowledge of petitioner's experience in Cameroon, and their testimony rested on multiple levels of hearsay and was not supported by other indicia of reliability, *id.* at 22a-26a; and the agency properly refused to credit the SDF letters because they provided inconsistent timeframes for petitioner's membership and omitted significant facts, *id.* at 27a-28a.

The court did conclude that the agency erroneously discounted the weight to be given to the 2000 convoca-

tion and the 2002 telegram. Pet. App. 28a-29a. But the court found that error was harmless, explaining that even giving weight to those documents and all of petitioner's remaining evidence, "it is clear that insufficient evidence existed to establish past persecution." *Id.* at 29a-30a.

c. The court of appeals did not, as petitioner contends (Pet. 22), allow the agency's adverse credibility finding to "trump" the other evidence she presented in support of her claims. To the contrary, the court stated that "[d]espite an adverse credibility determination, applicants for asylum can establish past persecution through independent evidence," and that "[t]he agency may not ignore such evidence and reject the claim solely on the basis of the adverse credibility determination." Pet. App. 21a. The court evaluated each individual piece of evidence that petitioner had submitted to determine whether the agency had provided "specific, cogent reasons for discrediting" it. *Id.* at 22a (citing *Kourouma* v. *Holder*, 588 F.3d 239, 241 (4th Cir. 2009)).

Petitioner notes (Pet. 9) that the court concluded the remaining evidence was insufficient because it "lack[ed] any meaningful significance without a credible explanation as to its context." Pet. App. 30a. But that does not mean that the court of appeals was using the agency's adverse credibility finding to "trump" petitioner's documentary evidence. The court's opinion makes clear that it was evaluating the probative value of the evidence petitioner presented, not merely discarding it.

Furthermore, there is no support for petitioner's contention (Pet. 12) that the court's evaluation of her documentary evidence should have been "segregate[d]" from the assessment of her testimony. "An asylum merits hearing is no different than any other trial or hearing in

which the factfinder must resolve conflicts in the testimony." *Kin* v. *Holder*, 595 F.3d 1050, 1057 (9th Cir. 2010). The adjudicator must consider the evidence as a whole and "evaluate the conflicting and corroborating testimony to determine the relevant facts and make a decision on the merits of the alien's application." *Ibid.* A reviewing court is not required to take independent evidence at face value, as petitioner suggests, but instead must assess the reliability of that evidence.[1] Moreover, the courts of appeals have expressly approved of the procedure that petitioner finds objectionable here, taking into account her own testimony—which the IJ and the Board found not to be credible—when evaluating the reliability of other evidence on which she relied.[2]

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[1] See *Khozhaynova* v. *Holder*, 641 F.3d 187, 194 (6th Cir. 2011) (concluding that "it was reasonable for the immigration judge to ask for a statement concerning the manner in which the documents were collected" to assess their authenticity); *Long-Gang Lin* v. *Holder*, 630 F.3d 536, 543 (7th Cir. 2010) (holding that IJ was "entitled to give [the documents] whatever weight she thought they deserved in light of all the evidence"); *Onsongo* v. *Gonzales*, 457 F.3d 849, 854 (8th Cir. 2006) (approving IJ's assessment of reliability of corroborating evidence); *Lin* v. *Gonzales*, 434 F.3d 1158, 1160 (9th Cir. 2006) ("We readily acknowledge that an IJ need not accept all documents as authentic nor credit documentary submissions without careful scrutiny.").

[2] See *Dayo* v. *Holder*, 687 F.3d 653, 658 (5th Cir. 2012) (finding a letter submitted by the alien untrustworthy because of contradictions between the letter and the alien's testimony); *Khozhaynova*, 641 F.3d at 194 ("[A]s the immigration judge found that [the alien's] testimony was not credible, he was entitled to doubt the authenticity of the supporting documents."); *Li* v. *Mukasey*, 529 F.3d 141, 149 (2d Cir. 2008) ("[W]e afford IJs considerable flexibility in determining the authenticity of * * * documents from the totality of the evidence."); *Qin Wen Zheng* v. *Gonzales*, 500 F.3d 143, 147 (2d Cir. 2007) (concluding

The IJ, sustained by the Board, properly evaluated each document that petitioner submitted and assessed its reliability in light of all the evidence, and the court of appeals concluded that there was substantial evidence supporting the agency's findings. That factbound decision is correct, and this Court's review is unwarranted. See *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant * * * certiorari to review evidence and discuss specific facts.").

2. Petitioner contends (Pet. 13-17) that there is a conflict between courts of appeals that consider independent evidence "separately" from an alien's testimony and other courts that "allow an adverse credibility finding to trump independent evidence demonstrating entitlement to relief." That is incorrect.

a. In addition to the court of appeals in this case, which expressly acknowledged that "[t]he agency may not ignore [an alien's documentary] evidence and reject the claim solely on the basis of the adverse credibility determination" (Pet. App. 21a), petitioner contends (Pet. 15-16) that the First and Eighth Circuits have "allowed an adverse credibility finding to trump substantial independent evidence [that] * * * compels the conclusion that the petitioner is entitled to withholding of removal or CAT relief." Petitioner's cases establish no such practice.

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that agency may use adverse credibility finding "in support of its refusal to credit the authenticity" of documents submitted by the applicant); *Apouviepseakoda* v. *Gonzales*, 475 F.3d 881, 884 (7th Cir. 2007) (upholding IJ's finding that alien's "corroborating documentary evidence only raised additional questions" because of conflicts with her testimony); *Singh* v. *Gonzales*, 413 F.3d 156, 159 (1st Cir. 2005) (upholding discounting of documentary evidence that "conflicted with and tended to discredit [the alien's] testimony further, rather than rehabilitate it").

In *Weng* v. *Holder*, 593 F.3d 66 (1st Cir. 2010) (see Pet. 15-16), the IJ concluded that the alien had failed to offer credible testimony that she feared religious persecution in China because her prior statements to immigration officers contained no mention of religious persecution. *Id.* at 70. The First Circuit noted that the IJ did not specifically analyze all of the documentary evidence the alien had presented, *ibid.*, but because those documents "did not add new facts," the court "infer[red] that the IJ rejected the[] documents * * * for the same reasons he chose not to credit her testimony," *id.* at 73. The court did not allow an adverse credibility finding to "trump" other evidence that was sufficiently weighty to warrant relief on the record as a whole. The court specifically concluded that "the remaining evidence would not compel a factfinder to conclude that [the alien] had suffered past religious persecution or feared future persecution." *Id.* at 68.

Similarly, in *Esaka* v. *Holder*, 397 F.3d 1105 (2005) (see Pet. 16), the Eighth Circuit correctly noted that "an IJ can properly consider a claimant's discounted credibility when determining whether he or she will be subjected to torture" for purposes of CAT protection. *Id.* at 1111. But here again, the court did not hold that the agency's adverse credibility finding could "trump" documentary evidence that would otherwise compel the conclusion that the alien is entitled to protection. Rather, the court concluded that the alien's additional evidence demonstrated only "the general dangers present in Cameroon," and that "presenting evidence of general conditions is insufficient to establish that one is more likely than not to suffer torture." *Id.* at 1111-1112.

b. The cases petitioner identifies (Pet. 13-15) from the Second, Seventh, and Ninth Circuits as holding that

a court must evaluate documentary evidence "separately" from an alien's incredible testimony are fully consistent with the court of appeals' decision in this case.

In most of the cases petitioner cites, the Board had refused to consider the alien's additional evidence *at all*, often in the context of a motion to reopen in which the further evidence was new. See *Gebreeyesus* v. *Gonzales*, 482 F.3d 952, 955 (7th Cir. 2007) (Board denied a motion to reopen without evaluating the alien's new evidence "in view of the [IJ's] adverse credibility determination") (brackets in original); *Paul* v. *Gonzales*, 444 F.3d 148, 153 (2d Cir. 2006) (Board "refus[ed] to consider" new evidence because the IJ's adverse credibility finding meant the alien "could no longer successfully petition for asylum or withholding of removal"); *Ramsameachire* v. *Ashcroft*, 357 F.3d 169, 185-186 (2d Cir. 2004) (concluding that Board "should have considered all of [the alien's] proffered evidence" before rejecting his CAT claim based on adverse credibility finding); *Kamalthas* v. *INS*, 251 F.3d 1279, 1282 (9th Cir. 2001) (Board "plainly overrelied on its prior adverse credibility finding" in denying alien's motion to reopen for new evidence relevant to CAT claim); *Mansour* v. *INS*, 230 F.3d 902, 907 (7th Cir. 2000) (Board denied motion to reopen without evaluating alien's new evidence in support of CAT claim based on prior adverse credibility finding); see also *Win* v. *Holder*, 435 Fed. Appx. 663, 665 (9th Cir. 2011) ("The BIA failed to address [the alien's documentary evidence], only affirming the IJ's finding that [the alien] was not credible."). And in *Zahedi* v. *INS*, 222 F.3d 1157 (9th Cir. 2000), the court concluded that the IJ erred by "rejecting the [alien's] documents summarily," when the agency "had a responsibility to make findings, based on the individual documents and the circum-

stances surrounding them, and concerning the reliability of the evidence." *Id.* at 1165. In petitioner's case, not only did the IJ and the Board independently evaluate each piece of evidence petitioner submitted, but the court of appeals specifically acknowledged that "[t]he agency may not ignore such evidence and reject the [alien's] claims solely on the basis of the adverse credibility determination." Pet. App. 21a.

Moreover, in *Gebreeyesus* and *Paul*, the courts stated that the agency's adverse credibility finding did not foreclose the alien's motion to reopen "*so long as the factual predicate of [her] claim of future persecution is independent of the testimony that the IJ found not to be credible*." *Gebreeyesus*, 482 F.3d at 955 (emphasis added) (brackets in original); *Paul*, 444 F.3d at 154 (same). In petitioner's case, the documentary evidence that the agency found incredible was submitted in support of petitioner's claims of *past persecution*—the same subject of her discredited testimony. Petitioner has identified no case holding that an alien's incredible testimony must be segregated from the other evidence she presents in reviewing her claims for relief. There is no circuit conflict on that issue.

c. Nor is there a "subsidiary" conflict (Pet. 17-19) regarding whether a court of appeals may make "factual findings on appeal" regarding the sufficiency of an alien's independent evidence. It is well established that upon review of agency action, the courts of appeals are not empowered to conduct their own factfinding and may only review the facts as found by the agency to determine whether the findings are supported by substantial evidence. See *INS* v. *Ventura*, 537 U.S. 12, 16 (2002); 8 U.S.C. 1252(b)(4)(A) and (B) (providing that in immigration cases the "court of appeals shall decide the

petition only on the administrative record on which the order of removal is based," and "the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary"). The court of appeals did not depart from that established framework here.

Petitioner contends (Pet. 18) that the court of appeals conducted its own factfinding to find that Njeck's testimony and Njoh's affidavit were not credible. That is incorrect. The IJ expressly determined that Njeck's testimony "fail[ed] on the burden of proof" because it was based on information "told to him by [petitioner] and by [Njoh] and * * * an SCNC official from Cameroon," and that Njeck's testimony and Njoh's statement contained omissions regarding petitioner's arrests and leadership position with the SCNC. Pet. App. 65a. Just as expressly, the Board affirmed the determination that Njeck's testimony was properly given less weight because "he had no firsthand knowledge of the alleged mistreatment," and it referred to the omissions from Njoh's statement. *Id.* at 46a. The court of appeals did not improperly rely on its own factual findings to uphold the agency's decision. It sustained the findings made by the agency, concluding that they were supported by substantial evidence. Further review of petitioner's fact-bound claims is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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