

SUMMARY OF UNPUBLISHED BIA CASES

Matter of D-S-M-, Affirmed December 3, 2004

Direct evidence of false documents and testimony

Respondent initially submitted what he later admitted to being a completely false asylum claim which included affidavits and sworn testimony to the asylum officer. After his representative was arrested and charged with immigration fraud, Respondent admitted his false claim and submitted an alternate story. He testified he was being sought after by a family in India because he had been involved in a fight after a cricket match with their son. However, Respondent's second story contained discrepancies and inconsistencies. For instance, he testified that the boy was Hindu and he was Sikh, a fact not mentioned in his declaration. He also stated without reasoning or support that he was accused of being a militant. In addition, he first stated in his declaration that he was beaten with a long plastic bat, but later stated in his testimony that he was not beaten with such an instrument. He also submitted corroborating evidence in the form of an arrest warrant that was unaccountably dated March 2001, two years after Respondent left India, and cites to a violation of the Arms Act, which does not comport with his testimony. The evidence could be given only little weight, and did not support a claim for relief. Further, evidence supported a frivolous filing finding.

Matter of K-D-S-, Affirmed December 28, 2006

Direct evidence of false documents; circumstantial evidence of implausibilities

Respondent testified that he was arrested, went to Dubai for about three years where he worked loading and unloading cement bags, then upon return to India in 2000, was again arrested and tortured, and sought treatment at a hospital. Frivolous finding based on the following: Respondent claimed he was treated by Dr. Bedi but agents in India interviewed Dr. Bedi and he denied ever having treated Respondent, of having a hospital large enough to admit someone, and being able to write in English; Respondent presented a witness from Survivors International that testified he was unable, from his forearms, to apply any upward pressure against her arms without excruciating pain but Respondent had testified he spent 11 hours a day for 6 days a week for 3-4 years lifting 100 pound concrete bags; Respondent was unable to produce testimony or a statement from his cousin who observed events and lived in the United States because the cousin was a truck driver and was very busy. Based on his false testimony about his arrest and treatment, and after noting notice and opportunity to explain, IJ made a frivolous finding.

Matter of S-S-D-, Affirmed September 25, 2006

Direct evidence of initial false application

Respondent first applied for asylum using another name, A number, and nationality, and had received asylum based on this identity. Using his asylee status, Respondent obtained travel documents, a visa, driver's license, social security number, and employment authorization card. Further, Respondent traveled to India to visit his sister. Meanwhile, he also renewed his Nepalese passport and obtained a large number of credit cards under his own name. The IJ found that Respondent had received the frivolous filing warnings when he submitted his original affirmative application for asylum, and when he was interviewed before an asylum officer. It was not necessary to present the Asylum Officer's testimony because the DHS submitted Respondent's signed and sworn declaration. Frivolous finding was upheld by BIA, but it found that, despite this finding, a respondent will still be eligible to seek withholding of removal based on the regulations.

Matter of U-N-, Affirmed on July 31, 2006

Circumstantial evidence of demeanor and implausibility

When asked questions not specifically on her two declarations, Respondent was hesitant and tentative and appeared not to have a ready answer. She appeared to be utterly ignorant of contents of testing, manner of testing, or means of testing which she supposedly performed and which formed the basis of her opinion that the building was dangerous. She could not describe the type of equipment she used, what kind of readings it took, what scale was used to measure those readings, and was unable to describe what the equipment was reading or why the zone was considered seismically active. Further, she was unable to recall the area in which the earthquake zone and the building was to take place, testifying as to several different possibilities. In an attempt to rehabilitate her vague testimony regarding her education and thesis, Respondent submitted a scanned copy of a diploma she purported

to be her own, but was unable to explain why it was stamped September 12, 2003. In addition, she was unable to list any of the classes she took as part of her major.

Matter of S-S-, Affirmed adverse credibility but vacated frivolous finding, February 13, 2007

Circumstantial evidence of inconsistencies and failure to present identity documents

Respondent and her husband provided inconsistent testimony regarding the number, duration, and circumstances of her arrests. They also provided inconsistent testimony regarding the circumstances of his arrests, and her contact with the police during such arrests. Further, the female Respondent failed to submit evidence regarding her identity and offered no plausible explanation for this failure. Although the BIA upheld the adverse credibility finding, the frivolous finding was vacated because the inconsistencies were insufficient to result in the conclusion that the claim was completely fabricated. Case not remanded.

Matter of D-S-, Affirmed on March 19, 2007

Direct evidence of false testimony and circumstantial evidence of inconsistencies

IJ found there were major inconsistencies regarding Respondent's whereabouts during the time he claimed to have been persecuted. He testified he experienced two arrests in late 1999 and late 2001 in India and then went to Panama to work with his relatives from late 2001 to early 2003. He returned to India because he heard people were returning with no problems but, upon entrance, he was detained and tortured. He again left India and came to the United States in April 2003. However, Respondent's passport indicates he was in Panama in 1999, that he had gone through the United States for travel in February 2000, and that he had been a resident of Panama. Further, a secondary inspection officer's notes from 2003 upon Respondent's transit back to India from Panama, from a person with the same name, birth date, and passport number, indicates that this individual (presumably Respondent) told the officer he had lived in Panama for fourteen years and was fluent in Spanish. Respondent denied that he talked to anyone during his transit and his only explanation for the evidence indicating his residence in Panama was that none of the information is incorrect and it must be a mistake in the paperwork. This explanation was not credible given that his own passport which he provided contained evidence of his residency in Panama during the 1999-2001 time period. Frivolous finding upheld because the testimonial fabrication was deliberate and material (because it related to time periods during which he claimed to have been persecuted by Indian officials). Further, Respondent was given the frivolous warning and an opportunity to explain all discrepancies.

Matter of B-S-C-, Reversed on April 17, 2007

Direct evidence of inconsistencies of documents and circumstantial evidence of inconsistencies and demeanor

On appeal, Respondent argued that the IJ erred in making a frivolous finding because he "did not admit to filing a false application." The BIA found that the correct legal standard is whether Respondent "deliberately fabricated a material element of his asylum claim." However, because the IJ had not clearly articulated which material element was fabricated, or by whom (it could have been the son's declaration that was false, and not the Respondent's), Respondent's appeal of the frivolous finding was sustained.