

SUMMARY OF NINTH CIRCUIT CASES

[***Note: You may cite to unpublished cases issued after January 1, 2007, pursuant to amended [Federal Rule of Appellate Procedure 32.1](#)]

A. Published

Farah v. Ashcroft, 348 F.3d 1153 (9th Cir. 2003) - substantial evidence supports frivolous finding. While Petitioner was given ample opportunity to explain the discrepancies that led to the adverse credibility finding, he **was not given the opportunity to explain with regard to the discrepancies which formed the frivolous finding**. Specifically, the IJ relied on different discrepancies between what Petitioner said and the extrinsic evidence. Petition granted and remanded.

B. Unpublished

1. Frivolous Finding Remanded

- *Chandi v. Gonzales*, 2007 WL 1112665 (9th Cir. 2007) - IJ **did not clearly explain his reasons for finding that Petitioner was not credible, he did not identify the specific discrepancies** on which he based his determination that the application was frivolous, and **did not give Petitioner an opportunity to address** those discrepancies.

- *Deperyan v. Gonzales*, 2007 WL 748724 - IJ did not make finding to support a frivolous finding where he *did not make a specific finding* that Petitioner “deliberately fabricated” portions of his application. Remanded.

- *Abdulkadir v. Gonzales*, 131 Fed. Appx. 534 (9th Cir. 2005) - Adverse credibility based on **impermissible conjecture** where IJ concluded that a member of the Madiban caste would not refer to himself as a “Midgan” where Petitioner admitted that the word is an insulting term in Somalia, and the Department of State report identified Madiban as a sub-branch of the Midgan caste. **Because he was found to be credible, the frivolous finding was improper.**

- *Nenkam v. Ashcroft*, 113 Fed. Appx. 826 (9th Cir. 2004) - Adverse credibility finding supported by substantial evidence with regard to the suspect nature of the arrest warrant and Petitioner’s failure to seek asylum in France. However, IJ **did not find that the arrest warrant was fabricated, nor does the record support his non-specific statement that the evidence is replete with fabrication**. The frivolous finding is reversed.

- *Chen v. Ashcroft*, 108 Fed. Appx. 465 (9th Cir. 2004) - Adverse credibility finding upheld, even though certain findings were based on impermissible speculation. In addition, Petitioner’s failure to submit corroborating evidence undermines his credibility. However, **Petitioner did not seek to support his application with intentionally false statements**, so the frivolous finding was remanded.

- *Pan v. Ashcroft*, 107 Fed. Appx. 136 (9th Cir. 2004) - Adverse credibility finding based on inconsistent dates provided by Petitioner and his brother-in-law is supported by substantial evidence. However, frivolous finding is remanded because **where Petitioner resides in the United States is not material to his application and the record does not establish that Petitioner deliberately made false statements** regarding the incident in 1999.

- *Wong v. Ashcroft*, 103 Fed. Appx. 234 (9th Cir. 2004) - **Adverse credibility not supported by substantial evidence so frivolous finding must also be reversed**. Failure to remember the date of their daughter’s birth to establish adverse credibility was based on speculation, as was IJ’s skepticism about Petitioner not receiving some type of notice to insert the IUD from the family planning commission.

- *Istifan v. Ashcroft*, 84 Fed. Appx. 952 (9th Cir. 2003). Frivolous finding was based on **testimony that was not in fact inconsistent, or showed only minor inconsistencies**. There is no evidence that Petitioner fabricated any of his testimony, much less material testimony.

- *Ozga v. Gonzales*, 180 Fed. Appx. 706 (9th Cir. 2006) - The absence of a proper opportunity for Petitioner to explain all discrepancies in the record requires us to overturn the conclusion that the application was knowingly frivolous.

2. Frivolous Finding Upheld

- *Kaur v. Gonzales*, 2007 WL 1186550 (9th Cir. 2007) - Frivolous finding and adverse credibility upheld where Petitioner **could not identify basic Sikh concepts and holidays and testimony was inconsistent**. She indicated she was a devout Sikh in India to the Asylum Officer, but later explained in her hearing that she was introduced to Sikhism in the United States. Her testimony was inconsistent regarding her alleged religious persecution in India, and also about her entry to the United States.

- *Fathalla v. Gonzales*, 227 Fed. Appx. 599 (9th Cir. 2007) - IJ's frivolous finding was upheld by substantial evidence. Petitioner **admitted she intentionally withheld the fact that she had been living in France** with her three children for eighteen years prior to her entry; she claimed her husband had been arrested and executed by Iraqi authorities in 1990 but later stated her husband died of a heart attack in 1982, and she admitted she **had purchased false birth and baptismal certificates for her children** in Mexico to support her claim.

- *Singh v. Gonzales*, 222 Fed. Appx. 649 (9th Cir. 2007) - Substantial evidence supports frivolous finding where Petitioner **knowingly submitted falsified documents with his first asylum application and lied under oath** to the asylum officer. In addition, Petitioner was unable to explain how he could maintain the secrecy of his alleged membership in the Akali Dal Mann, thereby maintaining his position as a government employee, when he was giving public speeches at rallies for Khalistan.

- *Ursini v. Gonzales*, 205 Fed. Appx. 496 (9th Cir. 2006) - Substantial evidence supported frivolous finding. Petitioner **submitted false and material documents going to the heart of her asylum claim**, and was given ample opportunity to respond to finding that first such document submitted by her was false, did so by submitting second false document, and was given three additional weeks to explain discrepancy but failed to respond.

- *Singh v. Gonzales*, 195 Fed. Appx. 556 (9th Cir. 2006). Substantial evidence supports frivolous finding. Petitioner's **documentary evidence was inconsistent with his testimony** regarding the nature of injuries he sustained during a 1993 arrest. In addition, he submitted letters from two different doctors purporting to have cared for him during the same period but testified that only one doctor treated him. Finally, he claimed to have been active in the 1989 elections but **lacked basic knowledge regarding the political candidate** he allegedly supported.

- *Singh v. Gonzales*, 158 Fed. Appx. 45 (9th Cir. 2005) - Substantial evidence supports frivolous finding when **testimony conflicted with supporting documents regarding fear**. Petitioner testified that his father died at the hands of Punjabi police in 2001 but also submitted an affidavit dated 2002 with father's signature.

- *Singh v. Gonzales*, 163 Fed. Appx. 458 (9th Cir. 2005) - Substantial evidence supports frivolous finding where **Petitioner engaged in a pattern of providing non-responsive or contradictory answers**. Petitioner's testimony was internally inconsistent, contradictory and irreconcilable with his application and documentation concerning the events surrounding his alleged arrest, medical treatment for injuries received from police, and subsequent time spent in hiding. He **knew little about the Sikh pursuit of Kahlistan** despite his claim to be a supporter of that cause.

- *Azabo v. Gonzales*, 152 Fed. Appx. 690 (9th Cir. 2005) - Substantial evidence supported finding that alien knowingly filed a frivolous application where there **were inconsistencies in evidence regarding his refugee status in Turkey**. Petitioner testified he had been imprisoned and tortured in Iraq but evidence indicated he had sought refugee status in Turkey during the same time period. IJ afforded him opportunity to account for discrepancies and repeatedly warned him of risk of frivolous application.
- *Warsameh v. Gonzales*, 147 Fed. Appx. 696 (9th Cir. 2005) - Substantial evidence supported frivolous finding where Petitioner **withheld information on his applications and there were numerous inconsistencies**. He neglected to include relevant information regarding his employment and past residences on his biographical information G-325 form and the IJ noted numerous inconsistencies in the record which were supported by the record. Petitioner was given sufficient opportunity to explain the false statements but the IJ rejected them.
- *Khurana v. Gonzales*, 134 Fed. Appx. 147 (9th Cir. 2005) - Substantial evidence supports frivolous finding where Petitioner was given an adequate opportunity to explain the inconsistencies and where there were there were **major inconsistencies** such as Petitioner's testimony that she was arrested and raped in India in March 1999 but her passport indicated she was not in India during that period.
- *Kaur v. Gonzales*, 125 Fed. Appx. 854 (9th Cir. 2005) - Frivolous finding supported where Kaur's **testimony conflicted with documentary evidence** indicating that she entered the United States on a previous occasion, before her arrests and beatings in India allegedly occurred.
- *Bihi v. Gonzales*, 121 Fed. Appx. 773 (9th Cir. 2005) - Substantial evidence supports frivolous finding where Petitioner's testimony was **inconsistent regarding key elements of his asylum application that went to the heart of his claim** including identity, clan membership, and the harm his family suffered.
- *Hernandez-Chavez v. Ashcroft*, 101 Fed. Appx. 759 (9th Cir. 2004) - Adverse credibility finding supported by substantial evidence based on the **omission of incidents forming the heart of Petitioner's claim from his initial interview**, and his statement at the interview that he had no problems with the Mexican police. Such contradictions also support the frivolous finding.
- *Emilov v. Ashcroft*, 89 Fed. Appx. 69 (9th Cir. 2004) - Frivolous finding supported by substantial evidence where Petitioner filed an application containing deliberate fabrications because it **irreconcilably conflicted with a previously submitted applicant** and he could not explain the discrepancies.
- *Hernandez v. Ashcroft*, 83 Fed. Appx. 248 (9th Cir. 2003) - IJ's frivolous finding was adequately supported by the record.
- *Garcia v. Ashcroft*, 80 Fed. Appx. 23 (9th Cir. 2003) - Substantial evidence supports IJ's finding that Petitioner filed a frivolous application containing deliberate fabrications.
- *Trinidad v. INS*, 108 F.3d 339, 1997 WL 66496 (9th Cir. 1997) - BIA did not abuse discretion in denying voluntary departure where BIA upheld a frivolous finding where Petitioner's testimony **contradicted the State Department's opinion letter** and Petitioner made no attempt to corroborate his claim with the production of non-testimonial evidence.