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5-3-2004

## Chen v. Atty Gen USA

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**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NO. 02-4506

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YAN RONG CHEN,

Petitioner

v.

JOHN ASHCROFT, Attorney General  
of United States of America

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On Review of a Decision of the  
Board of Immigration Appeals  
(Agency No. A77 309 323)

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Submitted Under Third Circuit LAR 34.1(a)  
December 15, 2003

BEFORE: ROTH, McKEE, and ROSENN, CIRCUIT JUDGES

(Filed May 3, 2004)

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OPINION

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ROTH, Circuit Judge

Yan Rong Chen, a native and citizen of the People's Republic of China, petitions for review of a final order of the Board of Immigration Appeals (BIA). For the reasons that follow, we will deny the petition.

## I.

On May 19, 2000, Chen entered the United States with a fraudulent passport. The Immigration and Naturalization Service (INS)<sup>1</sup> initiated removal proceedings against Chen, charging her as inadmissible pursuant to Section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who sought admission by fraud or willful misrepresentation, and under Section 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a valid entry document. She conceded removability but requested asylum, withholding of removal, and relief under the United Nations Convention Against Torture. Chen's application was based on her alleged resistance to China's population control measures.

The Immigration Judge (IJ) denied all relief on the basis of an adverse credibility determination, finding that Chen did not testify coherently and failed to “produce any objective evidence to show that the birth control policy in China requires unmarried women over the age of 20 to submit to quarterly examinations as she

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<sup>1</sup>We recognize, of course, that the Department of Homeland Security recently took over the functions of the former INS. For the sake of convenience, and because the INS was the actor at most times relevant to this appeal, we continue here to refer to the INS.

alleged.”<sup>2</sup> Chen appealed, the BIA affirmed, and Chen filed a timely petition for review.

## II.

To be granted asylum as a refugee, an applicant must establish that she is unable to return her homeland “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). Whether an applicant has demonstrated “persecution” or a “well-founded fear of persecution” is a factual determination reviewed under the substantial evidence standard. Abdille v. Ashcroft, 242 F.3d 477, 483 (3d Cir.2001). Under this standard, we will uphold findings of fact to the extent they are “supported by reasonable, substantial, and probative evidence on the record considered as a whole.” Balasubramanrim v. INS, 143 F.3d 157, 161 (3d Cir.1998). Similarly, adverse credibility determinations are also reviewed for substantial evidence, see Dia v. Ashcroft, 353 F.3d 228, 247 (3d Cir.2003) (en banc), and must be upheld unless “any reasonable adjudicator would be compelled to conclude to the contrary.” Gao v. Ashcroft, 299 F.3d 266, 272 (3d Cir.2002) (citing INA § 242(b)(4)(B), 8 U.S.C. § 1252(b)(4)(B)) (internal quotation omitted). Only

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<sup>2</sup> Alternatively, the IJ found that Chen was not persecuted on account of her “resistance to a coercive population control program.” 8 U.S.C. § 1101(a)(42)(B). We will not review this determination because, as explained below, we conclude that the IJ’s adverse credibility determination is supported by substantial evidence.

discrepancies that “involve the heart of the asylum claim” can support an adverse credibility finding. Id. “[M]inor inconsistencies” do not provide an adequate basis for an adverse credibility finding. Id.

### III.

We have reviewed the record in its entirety and find substantial evidence to support the adverse credibility determination.<sup>3</sup> As the IJ noted, Chen testified inconsistently concerning why birth control officials demanded that she submit to a pregnancy examination. Chen initially maintained that a new regulation required that all females over 20 years old undergo a check-up every three months to determine if they are pregnant. See Administrative Record at 73, 262. On cross-examination, however, Chen indicated for the first time that the birth control officials may have suspected that she was pregnant because she had a boyfriend. Id. at 97-98. Moreover, Chen’s credibility is undermined by discrepancies between her asylum application and her testimony. For example, in her application, Chen stated that she was notified via telephone on January 1, 2000, of her need to report for a physical examination. Id. at 262. Chen testified, however, that her mother received written notice of the examination on January 10, 2000. Id. at 71-72. In addition, Chen testified that her parents were detained for two days after she failed to report for a second scheduled

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<sup>3</sup> As the BIA affirmed without opinion, we will review the decision of the IJ. Abdulai v. Ashcroft, 239 F.3d 542, 549 n.2 (3d Cir.2001)

examination, id. at 83-84; this fact was omitted from her application. These inconsistencies go to the heart of Chen's asylum claim and would not compel any reasonable factfinder to find that her claims were credible.

#### IV.

For the foregoing reasons, we conclude that the IJ's adverse credibility determination is supported by reasonable, substantial, and probative evidence on the record as a whole. Accordingly, we will deny Chen's petition for review.