

In the
United States Court of Appeals
For the Seventh Circuit

No. 22-1781

AL AMIN POROSH,

Petitioner,

v.

MERRICK B. GARLAND, Attorney General of the United States,

Respondent.

Petition for Review of an Order
of the Board of Immigration Appeals.
No. A213-639-409

ARGUED NOVEMBER 7, 2022 — DECIDED JANUARY 5, 2023

Before FLAUM, EASTERBROOK, and ST. EVE, *Circuit Judges*.

FLAUM, *Circuit Judge*. Al Amin Porosh, a native and citizen of Bangladesh, sought asylum because of political persecution. After a hearing, the Immigration Judge (IJ) rendered an adverse credibility determination and denied Porosh asylum. The Board of Immigration Appeals (BIA) dismissed Porosh's appeal. Now, Porosh seeks review of those decisions, arguing that the IJ's adverse credibility finding was not based on substantial evidence. Although some of the IJ's conclusions lack

evidentiary support, we deny Porosh's petition for review because, on the whole, the IJ's decision is supported by findings that have a credible basis in the record.

I. Background

A. Factual Background

Porosh claims he joined a political party, Jamaat e-Islami (Jamaat), in 2012 when he was fifteen years old and living in Narayanganj, a city in Bangladesh.¹ His role was to recruit new members by explaining that Jamaat works for democracy and the freedom of the country while helping the community. His asylum claim is premised on three alleged encounters with an opposing political party, the Awami League, in 2014.

The first occurred in July 2014, when three Awami League leaders called and threatened to kill Porosh if he did not defect. Porosh did not report this threat to the police because he believes the Awami League controls the government, including the police.

In October 2014, members of the Awami League attacked Porosh and broke his left hand. After the beating, Porosh went to a government hospital but was denied admission, a fact he attributes to the Awami League's influence. Instead, Porosh received treatment from a private doctor, Ahasanui Kabir. Porosh did not report this attack to the police for the same reasons as before.

The final incident occurred in December 2014. Awami League members called Porosh and invited him to celebrate Victory Day (a national holiday in Bangladesh) with them.

¹ We relay these facts as Porosh recounts them.

When Porosh arrived, approximately fifteen members of the Awami League confronted him. They accused Porosh of obstructing their work and threatened to kill him if he did not defect. When he refused, they tied him up, taped his mouth shut, and transported him to another, unknown location. Porosh was locked in a room for two days before they untied his hands and gave him food and water. At that point, Porosh managed to flee.

After he escaped, Porosh went to the police to report these three incidents. Upon hearing that Porosh was attempting to file a complaint against the Awami League, the police threatened to kill him if he filed a report. A few weeks later, Porosh moved to another city in Bangladesh, hoping to evade detection. However, he claims Awami League leaders were still looking for him, and he did not feel safe.

In 2015, Porosh moved to Malaysia after obtaining a temporary work permit. But, in 2020, while he was still in Malaysia, Awami League members contacted his father, threatening that if they found Porosh, they would kill him.

Due to the COVID-19 pandemic, Malaysia announced that everyone with a temporary work permit would be sent back to their home country. In March 2021, Porosh decided to go to the United States instead and received what he believed to be a valid work permit.

On March 27, 2021, Porosh entered the United States through O'Hare Airport. When he presented his work permit for inspection, officers identified it as fake. After an interview, officers determined Porosh was "credible" and had a "credible fear of persecution" based on "political opinion."

B. Procedural Background

Deportation proceedings against Porosh commenced on April 14, 2021, when the Department of Homeland Security filed a notice to appear in Chicago Immigration Court. Porosh appeared *pro se*, admitted the Department's factual allegations, and conceded removability.

On June 24, 2021, Porosh applied for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). After a hearing, the IJ denied his applications, finding that Porosh was not credible and that his corroborating evidence did not support his claims.

Porosh appealed that decision to the BIA, which affirmed the IJ's conclusion as to the asylum claim. However, the BIA declined to affirm on two grounds the IJ considered in rendering an adverse credibility determination: (1) Porosh's use of a fraudulent work permit to enter the United States and (2) the IJ's impression that Porosh was evasive when answering certain questions. The BIA also concluded that Porosh failed to meaningfully challenge the IJ's denial of his application for withholding of removal and protection under CAT, so it considered those issues waived. Porosh timely appealed to this Court.

II. Discussion

We address only Porosh's asylum claim.² To receive asylum, applicants must prove they were "persecuted in the past

² "To exhaust an argument, and thus avoid waiver, it must be actually argued in the administrative proceedings." *Nyandwi v. Garland*, 15 F.4th 836, 841 (7th Cir. 2021) (citation and internal quotation marks omitted); *see also Kithongo v. Garland*, 33 F.4th 451, 458 (7th Cir. 2022) ("Not raising the[] issues before the Board constitutes a failure to exhaust."). Because Porosh

or ha[ve] a well-founded fear of future persecution on account of [their] race, religion, nationality, membership in a social group, or political opinion.” *Liu v. Ashcroft*, 380 F.3d 307, 312 (7th Cir. 2004) (citing 8 U.S.C. § 1101(a)(42)(A)). “[P]ersecution is defined as ‘punishment or the infliction of harm for political, religious, or other reasons that this country does not recognize as legitimate.’” *Id.* (quoting *Roman v. INS*, 233 F.3d 1027, 1034 (7th Cir. 2000)).

“Section 242(a) of the Immigration and Nationality Act (INA) vests the federal courts with jurisdiction to review final orders directing the removal of an alien from the United States.” *Meza v. Garland*, 5 F.4th 732, 734 (7th Cir. 2021) (citing 8 U.S.C. § 1252(a)). Where the Board has adopted and supplemented the IJ’s reasoning, we review both decisions. *Garcia-Arce v. Barr*, 946 F.3d 371, 376 (7th Cir. 2019). Here, the BIA’s order supplements the decision of the IJ, as opposed to affirming “on grounds that were in the alternative to the ones the IJ used.” *Liu*, 380 F.3d at 311. Therefore, “the IJ’s opinion as supplemented by the BIA’s opinion becomes the basis for review.” *See id.*³

“We review the decisions denying asylum ... for substantial evidence, applying *de novo* review to legal questions but

did not meaningfully challenge the IJ’s denial of his withholding of removal and CAT claims before the BIA, we need not consider them.

³ On appeal, Porosh argues that the IJ’s credibility determination was unsupported by substantial evidence because (1) he considered Porosh’s use of a fraudulent work permit and (2) he relied on an unsupported personal opinion in concluding that Porosh’s testimony about a doctor’s note was evasive. We agree with the BIA’s decision to “set aside” these findings, so our review is limited to the “remaining reason[s]” for the IJ’s determination. *See Lin v. Holder*, 656 F.3d 605, 608 (7th Cir. 2011).

reversing factual findings only if the record lacks substantial evidence to support them.” *Zhakypbaev v. Sessions*, 880 F.3d 881, 883–84 (7th Cir. 2018) (affirming the agency’s determination where it draws from “reasonable, substantial, and probative evidence on the record considered as a whole” (citation omitted)). The same deference is given to evaluations of credibility. *See Lin*, 656 F.3d at 609 (vacating and remanding IJ’s credibility determination where not supported by substantial evidence). It is not enough that “an alternate finding could also be supported by substantial evidence,” *Capric v. Ashcroft*, 355 F.3d 1075, 1086–87 (7th Cir. 2004); the alternative finding must be “compelled,” 8 U.S.C. § 1252(b)(4)(B).

Nevertheless, deferential review is afforded only where an IJ’s “credibility determination[] ... [is] supported by ‘specific, cogent reasons’ that ‘bear a legitimate nexus to the finding.’” *Capric*, 355 F.3d at 1086 (citing *Ahmad v. I.N.S.*, 163 F.3d 457, 461 (7th Cir. 1999)). Adverse credibility findings will not be upheld where they are “based on speculation or conjecture rather than on evidence in the record.” *Chen v. Gonzales*, 420 F.3d 707, 710 (7th Cir. 2005) (citing *Korniejew v. Ashcroft*, 371 F.3d 377, 383 (7th Cir. 2004)).

A. Inaccuracies and Inconsistencies

The IJ identified several inaccuracies and inconsistencies in Porosh’s testimony that supported his adverse credibility finding. We evaluate each in turn.

1. Democratic Goals of Jamaat

During his asylum hearing, Porosh testified that he joined Jamaat because it “works for ... democracy within [Bangladesh]” and for “the freedom of the country.” However, Porosh submitted into evidence an article titled: *Jamaat-e-Islami*

in Bangladesh: Past, Present and Future. It describes Jamaat's emergence as a social organization, noting that, despite developing a political arm, Jamaat "remained s[k]eptical of core political principles such as secularism and democracy to such an extent that [it] considered these concepts to be '*Haram*' (Islamic for '*forbidden*')."

The IJ found Porosh's claim "that he was a prominent recruiter for Jamaat [to be] improbable" given that "he described such an incorrect view of the principles of the party." On appeal, the BIA concluded that while Porosh "generally reference[d] this inconsistency, ... he [did] not meaningfully challenge it."

The BIA's reading of Porosh's brief was generous. Porosh did not address the inconsistency before the BIA, nor does he do so here. Failure to challenge this finding results in waiver. *Kithongo*, 33 F.4th at 458 (explaining that the failure of a petitioner to "actually argue[]" an IJ's finding before the BIA, such that it puts the BIA "on notice" of the challenge, constitutes waiver). As a result, "[w]e need not reach the merits of this argument." *Nyandwi*, 15 F.4th at 841.

Even if Porosh had challenged the IJ's finding on appeal to the BIA, the article Porosh put into evidence undercuts his testimony. See *Musollari v. Mukasey*, 545 F.3d 505, 510–11 (7th Cir. 2008) (holding that a "dramatic discrepancy" between petitioner's testimony regarding country conditions and "established background facts may form the basis of an IJ's adverse credibility finding"). The IJ reasonably relied on this evidence in support of his adverse credibility determination.

2. *High-Profile Jamaat Events*

Another basis for the IJ's adverse credibility determination was Porosh's unfamiliarity with recent, high-profile Jamaat events—some of which occurred while Porosh claims he was a recruiter. The same article, *Jamaat-e-Islami in Bangladesh: Past, Present and Future*, explains, "The trials against Jamaat-e-Islami leaders for war crimes have attracted worldwide attention." When questioned on this subject, however, Porosh claimed "he was unaware of the war crimes committed by Jamaat in 1971 or the riots that occurred in 2013 in connection with the War Crime Tribunals, which was created in 2009." Porosh's testimony led the IJ to "find[] it implausible that [Porosh] was so involved in Jamaat such that he was seen as a threat to Awami League." The BIA agreed.

On appeal, Porosh challenges this determination, contending that the IJ inappropriately "relied on his 'unsupported personal opinion'[] and 'perceived common knowledge.'" He argues that Jamaat is not a terrorist organization and that he "never witnessed any member ... authorizing ... criminal or violent activities" nor "participated in such actions" himself.

This response misses the mark. Whether Jamaat is actually a terrorist organization is not pertinent. The issue is whether Porosh's credibility is dinged by his claimed unawareness of events that his own documentary evidence describes as "attract[ing] worldwide attention."

Even if Porosh offered a way to reconcile the article with his testimony (he does not), our review is deferential, and we will not overturn an IJ's credibility determination if the IJ "provided specific reasons based on the evidence." *Dai v.*

Garland, 24 F.4th 628, 636 (7th Cir. 2022) (quoting *Tawuo v. Lynch*, 799 F.3d 725, 728–29 (7th Cir. 2015)). Here, the IJ’s conclusion was grounded in record evidence. As a result, we cannot conclude that it was based on “speculation or conjecture.” *Chen*, 420 F.3d at 710.

3. Reading During Hearing

The IJ took issue with Porosh reading from a piece of paper during redirect examination, finding that it displayed a lack of candor. On appeal, Porosh explains he looked at a document in front of him “[d]ue to the hearing being [over video] and his own misunderstanding of courtroom procedure.” After the IJ instructed him to stop reading from the document, “[Porosh] adhered to the IJ’s request and testified from his own memory.”

The transcript from the hearing shows the IJ stopped Porosh not long after he began reading. Nothing suggests Porosh’s misstep was based on anything other than inadvertence. Further, there is no evidence that, once corrected, he tried to resume reading from the piece of paper.

Procedural deviations such as this do not necessarily warrant an adverse credibility finding. In fact, overemphasizing “trivial matters” can lead to an adverse credibility finding unsupported by substantial evidence. *Cojocari v. Sessions*, 863 F.3d 616, 626 (7th Cir. 2017) (granting petition for review where “[t]he actual credibility decision by the immigration judge emphasized many ... trivial matters that d[id] not have a plausible bearing on [petitioner’s] credibility”); see also *Krishnapillai v. Holder*, 563 F.3d 606, 617 (7th Cir. 2009) (holding the IJ is “obliged to distinguish between inconsistencies and the like that are material and those that are not”).

Because there is no “basis ... for an adverse credibility determination” premised on Porosh’s fleeting contravention of hearing procedure, the IJ’s credibility determination, in this respect, was not supported by substantial evidence. *Torres v. Mukasey*, 551 F.3d 616, 631 (7th Cir. 2008).

4. Age

Another factor the IJ considered in rendering an adverse credibility determination was Porosh’s age. The IJ found it “difficult to believe that [Porosh], a minor who was still in high school, was recruiting members for Jamaat to such a degree that he posed a threat to the Awami League.”

On appeal, Porosh argues that the IJ relied on unsupported personal opinion and perceived common knowledge when he discredited Porosh’s testimony that at sixteen and seventeen he “convinced many people to join his party.” At the hearing, Porosh explained he had a good relationship with residents of Narayanganj, did significant work for Jamaat in that region, and “successfully ... recruit[ed] a lot of people.”

Under the INA, an IJ can render a credibility determination based on “the inherent plausibility of the applicant’s or witness’s account.” 8 U.S.C. § 1158(b)(1)(B)(iii). However, the record does not show that the IJ’s conclusion premised on Porosh’s age was tied to any evidence. In fact, Porosh testified on cross examination that fourteen and fifteen-year-olds could join political parties in Bangladesh, like he did.

Despite the deference accorded to agency determinations, an IJ’s conclusion cannot stand where “nothing in the record supports” it and “the only testimony [is] to the contrary.” *Lin*, 656 F.3d at 608; *see also Dong v. Gonzales*, 421 F.3d 573, 577 (7th

Cir. 2005) (“The IJ’s skepticism alone, in light of [petitioner’s] consistent testimony, does not support a negative credibility determination.”). Porosh’s testimony supports a conclusion that an adolescent could join a political party and be a successful recruiter. Nothing in the record refutes that evidence. Therefore, the IJ’s determination with respect to Porosh’s age lacked “specific, cogent reasons” bearing “a legitimate nexus to the finding.” *Capric*, 355 F.3d at 1086 (citation omitted).

5. Recruiting Efforts

The IJ’s adverse credibility finding was also premised on a perceived lack of detail in Porosh’s testimony concerning “how many people he recruited, the average age of the people he recruited, [and] how long he worked as a recruiter for Jamaat.”

During his testimony, Porosh did not specify the number of people he recruited or their average age. While Porosh testified that he joined Jamaat in 2012 and worked as a recruiter, it is unclear when his responsibilities as a recruiter began and ended. At the time of the asylum hearing, he still considered himself a member of Jamaat, although presumably his active recruiting activities had ceased, at the very least since entering ICE custody. Precisely when those activities abated, however, is uncertain. Porosh did not explain whether he continued to recruit members for Jamaat after moving to Malaysia.

We cannot fault the IJ for noticing this lack of detail and considering it in rendering an adverse credibility finding. *Santashbekov v. Lynch*, 834 F.3d 836, 840 (7th Cir. 2016) (holding that vague testimony supports adverse credibility determination). To be fair, the questioning at the hearing was not aimed at eliciting much detail. For example, Porosh was

never asked questions about the age or number of people he recruited—even by the IJ when he took over the examination. Nevertheless, the imprecision of Porosh’s testimony is apparent. As a result, the IJ’s credibility determination was “supported by specific, cogent reasons ... bear[ing] a legitimate nexus to the finding.” *Capric*, 355 F.3d at 1086; see also *Zhakypbaev*, 880 F.3d at 883–84 (affirming the agency’s determination where it draws from “reasonable, substantial, and probative evidence on the record considered as a whole”).

In sum, while some of the IJ’s findings are untethered to the record, his credibility determination is supported by other findings tied to substantial record evidence. See *Musollari*, 545 F.3d at 510 (“[T]he balance of the evidence relied on by the IJ supports the adverse credibility determination.”).

B. Corroborating Evidence

After making an adverse credibility finding based on Porosh’s testimony, the IJ found that Porosh was unable to rehabilitate his credibility with “extrinsic—and credible—corroborating evidence.” *Capric*, 355 F.3d at 1086. Porosh’s corroborating documentary evidence included (1) letters from his parents, cousin, and uncle and (2) a note from the private doctor who allegedly treated him after he was injured by the Awami League in October 2014.

1. Family Members’ Letters

Porosh’s family members’ letters all suffer from similar flaws. The IJ “accord[ed] little to no weight to the[] contents” of Porosh’s parents’ letters because they are identical. Porosh’s only explanation was that his parents “ha[ve] the same opinion about [him].” Even looking past this red flag, the IJ

noted the letters lack details necessary to corroborate Porosh's claim. Crucially, they do not specify which political party Porosh worked for, what work he did for the party, or when and how he was injured.

The same is true for the letters from Porosh's cousin and uncle, which the IJ found lacking because "[n]either ... identifies any of the political parties," "how badly or how many times [Porosh] was harmed by the 'opposition party,'" or when he was injured. Porosh argues that "it should be clear to a reasonable person that [his uncle and cousin] were referring to the fact that [he] suffered harm at the hands of the Awami League political party in Bangladesh because he was a member of Jamaat Islam."

We disagree. While another adjudicator could draw a different conclusion from Porosh's evidence, we will not displace an IJ's credibility determination unless "any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B). That is not the case here. Furthermore, there is no evidence in the record that the Awami League and Jamaat are the only opposing political parties working in Bangladesh. Therefore, the IJ's finding was supported by substantial evidence.

2. *Doctor's Note*

The IJ found that Porosh's doctor's note also failed to substantiate his claims. While "the doctor's note corroborates that [Porosh] was harmed in October 2014, it does not corroborate [Porosh's] testimony that he was harmed by Awami League in October 2014." The BIA affirmed. On appeal, Porosh contends that, in failing to credit the doctor's note, the IJ relied on unsupported personal opinion.

We cannot agree. A reasonable adjudicator would not be compelled to find that the doctor's note corroborates Porosh's claim for asylum. *See* 8 U.S.C. § 1252(b)(4)(B). Porosh's claim is premised on political persecution by the Awami League because of his membership with Jamaat, but the doctor's note fails to connect Porosh's injuries with his Jamaat membership. We have previously affirmed an IJ's adverse credibility determination where documentary evidence "does not mention any of the particulars of [petitioner's] claimed political activity or persecution." *Santashbekov*, 834 F.3d at 840 (7th Cir. 2016) (agreeing that medical records were of limited utility where they "d[id] not independently establish that political persecution was the cause [of the documented injuries]"). That same reasoning applies here. As a result, Porosh's documentary evidence does not corroborate his claim, and the IJ's conclusion was supported by substantial record evidence.

III. Conclusion

For the foregoing reasons, we DENY Porosh's Petition for Review.