FILED
United States Court of Appeals
Tenth Circuit

April 21, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ZHONGYAN SHAO; XIANGSEN MENG,

Petitioners,

v.

TODD BLANCHE, Acting United States Attorney General,*

Respondent.

No. 24-9541
(Petition for Review)

ORDER AND JUDGMENT**

Before **MATHESON**, **BACHARACH**, and **CARSON**, Circuit Judges.

Petitioners Zhongyan Shao and Xiangsen Meng are natives and citizens of China. Proceeding pro se,[1] they seek review of a Board of Immigration Appeals

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* Todd Blanche became the Acting Attorney General of the United States on April 2, 2026, and he has been substituted as Respondent. *See* Fed. R. App. P. 43(c)(2).

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] Because petitioners appear pro se, "we liberally construe [their] filings, but we will not act as [their] advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

(BIA) order that denied their appeal from the Immigration Judge's (IJ) removal order. The BIA dismissed their requests for asylum, restriction on removal, and protection under the Convention Against Torture (CAT). Exercising jurisdiction under 8 U.S.C. § 1252, we deny the petition for review.

BACKGROUND

The United States admitted petitioners in 2012 as nonimmigrant B-2 visitors, authorized to remain temporarily until no later than November 23, 2012. They remained past that date without authorization. On September 12, 2014, they applied for asylum, withholding of removal, and CAT protection with Ms. Shao as the lead applicant and Mr. Meng as a derivative beneficiary. In December 2015, an asylum officer interviewed them.

A. *The Asylum Interview*

Ms. Shao's Initial Interview

During Ms. Shao's initial interview with the asylum officer, she stated she discovered she was pregnant in May 2011 after undergoing an ultrasound. She told the doctor she was married and already had one child. R. at 161. The doctor informed her the pregnancy was "not allowed." *Id.* She and Mr. Meng knew that Chinese government policy prohibited her from having a second child. Fearful that the doctor might make her undergo an abortion, she told him she "wanted to go home to prepare." *Id.*

Ten days later, two family planning officials came to her home. They warned her that if she did not get an abortion her child could not be registered in the

household and she or her husband could be fired from public employment. They also told her that if she did not undergo an abortion voluntarily, they would force her. They stated if she did not go by the end of the month, they would take her to get an abortion.

To avoid a forced abortion, Ms. Shao and her husband planned to hide in Langfang, a small town in remote Hebei. They planned to leave for Langfang on May 27. Before they could, however, on May 25 two women and three men from the family planning committee returned to their home. They told her she would undergo an abortion that day. Ms. Shao recalled that her husband Mr. Meng and her in-laws were home at the time. Mr. Meng tried to stop the officials from taking Ms. Shao away, but the men kicked his legs, beat his face "blue and purple" and damaged his head, causing it to bleed. *Id.* at 164. They dragged Ms. Shao into a vehicle and took her to the Xianshuigu Health Clinic.

At the clinic they took Ms. Shao to an operating room on the second floor, where they forced her to undergo an abortion. As the result of her husband's altercations with the officials, he had "some wounds on his head and scratches to his neck." *Id.* at 166.

Mr. Meng's Interview

During his interview, Meng testified that his wife had become pregnant with their second child in 2006. He knew it was in 2006, because "after she came back in 2004, she [had] felt uncomfortable and underwent a check[-]up and then discovered

her pregnancy."[2] *Id.* at 170. He also recalled that their first child, born in 1997, was eight years old at that time.

Mr. Meng described the visit from the family planning officials, which he said occurred in May 2006. He stated only he and his wife were home at the time. The officials "forcefully dragged" Ms. Shao away and he "resisted strongly." *Id.* at 171. The men restrained him and kicked and beat him. He suffered scratches on his neck and red marks on his head and arms.

Ms. Shao's Re-interview

After speaking with Mr. Meng, the asylum officer re-interviewed Ms. Shao. She asked Ms. Shao why she had stated the abortion happened in 2011, but Mr. Meng had said it occurred in 2006. Ms. Shao responded that she didn't know, but Mr. Meng must have remembered it wrong. She then stated her first child was 15 when she had the abortion. She again stated that her in-laws had been at the house when she was taken for her abortion.

B. *The IJ Hearing*

On December 9, 2015, the Department of Homeland Security (DHS) served petitioners with Notices to Appear (NTAs) that charged them with having overstayed their visas. Petitioners admitted the allegations in the NTAs and conceded the charge

[2] At the IJ hearing Ms. Shao stated she had lived in South Korea from 2000 until 2004.

of removability. DHS referred their application for asylum and related relief to the immigration court and petitioners received a hearing before the IJ.

At the hearing, Ms. Shao's testimony was consistent with what she had told the asylum officer. She testified that after her daughter was born in 1997, the government forced her to use an IUD. The government removed the IUD in 2005, and although she used other contraception, she became pregnant again in 2011. She testified about being forced to have an abortion on May 25, 2011. She said the officers beat Mr. Meng when he tried to stop them from taking her to the hospital.

Ms. Shao stated the hospital staff gave her written verification of the procedure after the abortion. The staff also inserted another IUD. But she discovered prior to coming to the United States that it was no longer present.

Petitioners declined to call Mr. Meng to testify, but the government called him as a witness. The government's attorney asked him when Ms. Shao became pregnant, and he said May 2011. He stated his older daughter was 14 at the time. He admitted that during his asylum interview he said Ms. Shao became pregnant in 2006 when his daughter was eight. Explaining these discrepancies, he said he had been "too nervous." *Id.* at 142. The government also asked him when the family planning officials came to take Ms. Shao for a forced abortion, to which he replied "May 25, 2011." *Id.* The government then asked why he stated during the asylum interview that this occurred in May 2006. He responded that he did not "remember clearly" what he said during the interview. *Id.*

Mr. Meng further testified that as a result of his fight with the family planning officials, he had bleeding from his head, redness on his neck and bruises on his body. But he denied having any scratches on his neck. When asked about the discrepancies between this account of his injuries and what he told the asylum officer, he again responded he did not remember everything he said at that time.

C. *The IJ's Decision*

IJ's Credibility Determinations

The IJ found petitioners' testimony not credible, citing discrepancies between Mr. Meng's and Ms. Shao's statements to the asylum officer, and between Mr. Meng's statements to the asylum officer and petitioners' testimony at the IJ hearing. He cited Mr. Meng's inconsistent statements concerning the year of Ms. Shao's pregnancy and abortion, which he said went to the heart of both petitioners' application:

- Mr. Meng stated that Ms. Shao became pregnant with their second child in 2006, not 2011.
- When the asylum officer inquired further, he reinforced this earlier date by stating that his older child, born in 1997, was eight years old at the time.
- When asked what month family planning officials came to their home and took Ms. Shao for an abortion, Mr. Meng replied not simply "May" or May 2011, but specifically May 2006.
- At the IJ hearing, when asked about these inconsistencies, Mr. Meng replied only that he had been nervous during his interview with the asylum officer.

The IJ also found other inconsistencies. Mr. Meng stated only he and Ms. Shao were home when the family planning officials visited them for the forced abortion, but Ms. Shao told the asylum officer that her in-laws were also there. Mr. Meng described the injuries he suffered from his scuffle with the officials differently to the asylum officer and the court.

Because Ms. Shao's statements to the asylum officer were consistent with her testimony in court, the IJ could have found Ms. Shao credible and Mr. Meng not credible. He declined to do so because (1) they were a married couple who worked on their application together; (2) they "ostensibly had most of the experiences together in China," had applied together, and were in proceedings together, *id.* at 83; and (3) when given the opportunity to reconcile discrepancies, they were "only able to fall back on their being nervous," *id.*

IJ's Treatment of Medical Records

The IJ also analyzed whether petitioners, though not credible, had met their burden of proof by submitting other evidence. The IJ singled out two documents they submitted: (1) a medical certificate showing Ms. Shao had an abortion on May 25, 2011, which the IJ characterized as "a cheap handwritten slip of paper which could have been generated in San Gabriel Valley, California; New York City; or at a mill in China, or it could be an authentic[] document published by a hospital in China," *id.* at 78; and (2) a document purporting to be from a Chinese hospital confirming removing her IUD in 2005, which was "a cheap looking hand-written slip of paper, which . . . could have been generated at a mill, or a Kinkos copy store

almost anywhere in the world. It could also be an authentic document that was generated by a hospital in China." *Id.* at 78–79. The IJ noted petitioners laid no foundation for these documents, and did not authenticate them. Petitioners' testimony did not lay the foundation for the documents because it was not credible.

The IJ concluded there was no "reliable independent evidence that [petitioners] were subjected to China's family planning policies and persecuted by the Government of China," and "no documents in the record of proceedings that would support" their CAT claim. *Id.* at 83–84. He denied petitioners' application and ordered them removed to China.

D. The BIA's Decision

On appeal, petitioners challenged the IJ's adverse credibility finding and his treatment of Ms. Shao's medical records. The BIA found no clear error in the IJ's factual findings and determined specific, cogent reasons supported his adverse credibility finding. It further found that the IJ properly made an adverse credibility finding against Ms. Shao based on Mr. Meng's inconsistent statements. Noting that the Federal Rules of Evidence are instructive in immigration proceedings, the BIA found no error in excluding petitioners' medical records for lack of foundation. It further stated that by not authenticating the records, petitioners had not met their burden to establish eligibility for the relief they sought.

DISCUSSION

We review the BIA's decision under a substantial evidence standard, considering the record as a whole. *Neri-Garcia v. Holder*, 696 F.3d 1003, 1008 (10th Cir. 2012). The agency's "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). Where, as here, the BIA has issued a single-member decision, "we will not affirm on grounds raised in the IJ decision unless they are relied upon by the BIA, [but] we are not precluded from consulting the IJ's more complete explanation of those same grounds." *Maatougui v. Holder*, 738 F.3d 1230, 1237 n.2 (10th Cir. 2013) (internal quotation marks and alterations omitted).

A. **Asylum and Restriction on Removal**

To be eligible for asylum, a noncitizen must first show that she is a "refugee." *Wiransane v. Ashcroft*, 366 F.3d 889, 893 (10th Cir. 2004). The applicant bears the burden of proof. *See* 8 U.S.C. § 1158(b)(1)(B)(i). To establish refugee status, the applicant must demonstrate that she has suffered past persecution or "has a well-founded fear of [future] persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." *Id.* § 1101(a)(42)(A). Past persecution on political grounds includes being forced to abort a pregnancy or being persecuted for "resistance to a coercive population control program." *Id.* We also deem a well-founded fear of being forced to undergo such a procedure or of being persecuted for such resistance a well-founded fear of persecution on account of political opinion. *Id.*

"Restriction [on] removal likewise requires an applicant to prove persecution based on one of the protected grounds," by establishing "a clear probability of persecution" on that ground. *Karki v. Holder*, 715 F.3d 792, 801 (10th Cir. 2013) (internal quotation marks omitted). "Applicants who cannot establish a well-founded fear under asylum standards will necessarily fail to meet the higher burden of proof required for restriction on removal." *Id.* (brackets and internal quotation marks omitted).

1. *Adverse Credibility Finding*

The agency's credibility findings, "like other findings of fact, are subject to the substantial evidence test." *Elzour v. Ashcroft*, 378 F.3d 1143, 1150 (10th Cir. 2004). "The IJ's credibility assessment . . . will ordinarily be given great weight." *Htun v. Lynch*, 818 F.3d 1111, 1118-19 (10th Cir. 2016) (internal quotation marks omitted). Under the substantial-evidence standard this court "may not weigh the evidence, and . . . will not question the [IJ's] or BIA's credibility determinations as long as they are substantially reasonable." *Diallo v. Gonzales*, 447 F.3d 1274, 1283 (10th Cir. 2006) (internal quotation marks omitted). Credibility findings can be based on "any inaccuracies or falsehoods" in an asylum applicant's written or oral statements "without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim." 8 U.S.C. § 1158(b)(1)(B)(iii).

Petitioners contend the IJ should have found Ms. Shao's testimony credible because her testimony was detailed and consistent with her asylum interview and with the documentary evidence she provided. They claim the problem was with

Mr. Meng's testimony, not hers, and it was the government, not they, who called Mr. Meng as a witness. Finally, they note that by the time of the IJ hearing Mr. Meng testified consistently with Ms. Shao's testimony.

The BIA reasonably rejected these arguments. The agency assesses credibility by considering, among other things, the consistency between an applicant's or witness's written and oral statements and the consistency between such statements and other record evidence. *See id.* An IJ "may receive in evidence any oral or written statement that is material and relevant . . . made by the respondent or any other person during any investigation, examination, hearing, or trial." 8 C.F.R. § 1240.7(a).

Here, the government offered Mr. Meng's testimony, including his admission that he had made prior inconsistent statements, to impeach Ms. Shao's account of the circumstances surrounding her claim concerning a forced abortion. It was reasonable for the IJ to rely on this impeachment evidence to make an adverse credibility finding concerning both petitioners. *Matter of E-F-N-*, 28 I. & N. Dec. 591, 593–95, 597 (BIA 2022) (affirming an adverse credibility finding based in part on inconsistencies between the petitioner's testimony and written statements from relatives). Petitioners fail to show that the fact Mr. Meng had changed some details of his story to align with Ms. Shao's by the time of trial meant that the IJ could no longer consider the inconsistencies between their accounts in assessing their credibility.

Petitioners also argue that Mr. Meng's nervousness during the asylum interview and the stressful situation he was in explain his prior inconsistent

statements. But the BIA need not to accept petitioners' explanations for the inconsistencies in the record given other permissible views of the evidence. *See, e.g.*, *Suate-Orellana v. Barr*, 979 F.3d 1056, 1061 (5th Cir. 2020). Petitioners failed to show that no reasonable factfinder could make the adverse credibility ruling the agency made here.

2. *Documentation Submitted to Support Claims*

Petitioners also challenge the exclusion of their proffered medical records for lack of foundation and failure of authentication. As a threshold matter, they argue that the BIA can only exclude evidence if that evidence is irrelevant or fundamentally unfair. Although "[t]he test for admissibility of evidence in a deportation hearing is whether the evidence is probative and its use is fundamentally fair," petitioners fail to show that fundamental fairness required the IJ to admit documents that lacked a proper foundation or were insufficiently authenticated. *N-A-M- v. Holder*, 587 F.3d 1052, 1057-58 (10th Cir. 2009)

a. *Foundation*

Discussing the foundation issue, the BIA cited Federal Rule of Evidence 901(a), which requires a proponent to "produce evidence sufficient to support a finding that [an] item [of evidence] is what the proponent claims it is." This evidence may include the testimony of a witness with knowledge that "an item is what it is claimed to be." Fed. R. Evid. 901(b)(1). "The evidentiary rules are not so strictly applied in immigration hearings." *N-A-M-*, 587 F.3d at 1057. But the BIA has recognized that federal rules of evidence provide "useful guidepost[s] for

Immigration Judges in making factual findings." *Matter of M-A-M-Z-*, 28 I. & N. Dec. 173, 177 (BIA 2020).

Petitioners argue they laid a foundation for the documents through Ms. Shao's testimony that she received the medical records from the hospital on the dates of the alleged procedures. But the BIA concluded that the testimony could not support a foundation for the documents because it was not credible. We previously determined substantial evidence supported the agency's credibility determination. Petitioners fail to show the BIA erred in refusing to accept testimony by a non-credible witness to provide foundation for the documents.

b. *Authentication*

The BIA also upheld the IJ rejecting the challenged documents because petitioners had not authenticated them. Because substantial evidence supports the BIA's decision concerning lack of foundation, we need not consider whether it also properly excluded the documents for lack of authentication. *See, e.g.*, *Berdiev v. Garland*, 13 F.4th 1125, 1137–38 (10th Cir. 2021) (stating that we may uphold BIA's decision on an independent ground stated in the decision); *Murrell v. Shalala*, 43 F.3d 1388, 1390 (10th Cir. 1994) (stating that where agency decision is based on two independently sufficient grounds, we may affirm on one "regardless of the merit of [the party's] arguments relating to [the other]").

B. **CAT claim**

The BIA deemed petitioners' CAT claim waived because they did not contest the IJ's denial of that claim in their appeal. *See* R. at 3 n.2. Although petitioners

state they seek CAT relief, *see* Pet'rs Br. at 8, they fail to challenge the BIA's waiver determination. Accordingly, they waived the issue in this petition for review. *See Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) ("[W]e routinely have declined to consider arguments that are not raised, or are inadequately presented, in an appellant's opening brief.").

CONCLUSION

We deny the petition for review.

Entered for the Court

Joel M. Carson III
Circuit Judge