

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted November 30, 2023*

Decided June 20, 2024

BeforeDAVID F. HAMILTON, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 23-1496

VIDHI PATEL,
*Petitioner,*Petition for Review of an Order of the
Board of Immigration Appeals.*v.*

No. A216-570-775

MERRICK B. GARLAND,
Attorney General of the United States,
*Respondent.***ORDER**

Vidhi Patel seeks review of a removal order issued by the Board of Immigration Appeals affirming the Immigration Judge's denial of her application for asylum, withholding of removal, and protection under the Convention Against Torture. Because

* Based on Patel's unopposed motion to waive oral argument, we have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. *See* FED. R. APP. P. 34(a)(2)(C).

substantial evidence supports the IJ's adverse credibility finding, we deny Patel's petition for review.

I. BACKGROUND

Patel is a 29-year-old woman and a citizen of India. She was arrested in April 2018 when she crossed the United States–Mexico border. The day after her arrest, the government instituted removal proceedings against her for entering the country without permission. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Patel, through counsel, conceded that she was removable, and applied for asylum, withholding of removal, and protection under the Convention Against Torture.

A. Asylum Application

In her application for asylum and for withholding of removal, Patel included a statement that explained why she fled India for the United States. She described meeting an unnamed man in college; they started dating and contemplated marriage. After some time, they decided to split up. Patel described this man as “kind of [a] gangster,” with political and police support.

This man, Patel said, started to blackmail her with nude photos he had taken when they were dating. He insisted that she come to his farmhouse or he would post the photos on social media. She did; he raped her there and, unbeknownst to her, videotaped the encounter. A week later, he summoned her back to the farmhouse and she was raped again by the man and one of his friends.

Patel claimed that these incidents led her into a “serious depression.” She decided to attempt suicide by hanging herself from a fan. Fortunately, her brother arrived home, found her, and saved her life. Patel then told her family what had happened with her ex-boyfriend. Her application stated that her father wanted to act against the man but realized he was powerless to fight the well-connected ex-boyfriend. The ex-boyfriend's family began looking for Patel to kill her. So, her family started planning her escape to the United States.

Patel said that she tried at first to come to the country legally by taking an English proficiency test and applying for a visa. Her visa application was denied. She decided to come to the United States anyway by crossing the border from Mexico. Patel believed that if she stayed or returned to India, her ex-boyfriend would kill her.

Patel supplemented her application with several other documents. She provided two unsworn statements from family friends. These statements, which are essentially identical, provided that Patel had a politically powerful ex-boyfriend who was

blackmailing her and attempting to kill her. They also said he had a “video recording of physical relation of them ... by force,” which the man was trying to post on social media. The family friends also maintained that they had reported the man’s actions to law enforcement, but the police failed to respond. Patel also submitted country conditions evidence, including an academic journal article and news reports, that characterized rape as a “national problem” in India.

B. Asylum Hearing

At a hearing on the merits of Patel’s application held on September 19, 2019, Patel offered the following testimony. She explained that, for about two years, she dated a man, who she named as Nirov Takul, that she met in college. She testified that after she refused to marry him, Takul started blackmailing her with “bad pictures” he took when they were dating. Takul threatened to publish these photos online if she didn’t go to his farmhouse, where he and his friends would rape her.

Patel testified that she was raped three or four times at the farmhouse. She said that the first incident, which happened in December 2017, was perpetrated by Takul and two of his friends. After this “started happening frequently,” Patel explained that she tried to kill herself. She further testified that, after her brother thwarted her suicide attempt, she told her parents about the situation with Takul. She said this happened in January or February 2018.

She explained that she then moved in with her uncle, who, alongside her parents, persuaded her to leave India to avoid being killed by Takul. She went to Greece, France, and then Mexico, where she was then blindfolded and dropped off at the southern U.S. border. Patel stated that, when she crossed the border in April 2018, she received a medical check-up that revealed she was about three months pregnant. She revealed that she then had an abortion but had no medical records to support the pregnancy or the abortion.

Upon questioning by the IJ, Patel testified that she started dating Takul in 2015, while she was in college. She also stated, however, that she finished college in December 2014. The IJ then pointed out that her asylum application gave yet another date for the end of her college tenure: December 2013. To clear up the timeline, the IJ asked whether Patel had a copy of her college diploma; she answered that she did not but could have it sent. (The record does not show whether this was ever sent.)

After closing statements, the IJ asked the government’s counsel for clarification about Patel’s previous applications for an American visa. The government indicated

that she twice was denied a visa—once in July 2017 and again in August 2017. This was months prior to the alleged rape in December 2017.

C. Denial of Application

At the end of the hearing, the IJ denied Patel's application and ordered that she be removed to India.

The IJ noted the evidentiary issues in Patel's case. First, the IJ questioned the authenticity and lack of first-hand details of the affidavits from Patel's family friends. The IJ also noted Patel's failure to provide affidavits from her close family members, who were in an optimal position to corroborate her story. Moreover, the IJ pointed out that Patel had failed to provide any statements from any individuals in the United States who were providing her with assistance.

The IJ concluded that Patel had "failed to credibly establish" that she had been raped or that this harm had "caused her travel to the United States." This adverse credibility finding was based on several inconsistencies between Patel's asylum application, pre-written statements, live testimony, and the government's records. First, the IJ noted that Patel had attested in her application for asylum that she was raped twice; yet she testified that she was raped three or four times. Second, the IJ commented that Patel had alleged that she was raped first by Takul and then by his friends in her asylum application; she testified, however, that Takul's friends were involved in the first sexual assault. The timing of the alleged rape was also called into question because Patel alleged that she graduated from college in December 2013; however, at the hearing Patel testified that she obtained her computer administration degree in December 2014. But she also testified that she started dating Takul when she was in college in 2015 or 2016. Finally, the IJ highlighted that Patel's alleged timeline contradicted her testimony regarding her purpose for coming to the United States. In her application, Patel attested that she applied for a visa to come to the United States after she was raped, sometime between December 2017 and February 2018. Government records show, however, that Patel applied for a visa only twice, in July 2017 and then in August 2017—months before the alleged rape.

The IJ conceded that Patel's rape allegations were a "very significant form of harm," but her testimony was not credible. The IJ also found that Patel's statements were not corroborated by any credible evidence. Thus, the IJ denied the application for asylum, withholding of removal, and the Convention Against Torture.

D. The Board of Immigration Appeals Dismisses Patel's Appeal

On appeal to the Board, Patel argued that the IJ erred in finding that she was not credible, as the inconsistencies that the IJ identified were “not significant” and the IJ failed to consider the totality of the circumstances.

The Board upheld the IJ's decision and dismissed the appeal. It noted that the discrepancies the IJ identified “pertained to material and central aspects” of Patel's persecution claim—*i.e.*, that she was raped by an ex-boyfriend. The Board also agreed with the IJ that Patel did not sufficiently corroborate her claims.

Having appropriately exhausted her administrative remedies, Patel now seeks review from this Court.

II. DISCUSSION

A. Legal Background

Patel applied for asylum, withholding of removal, and protection under the Convention Against Torture. Since the burden for establishing asylum is less stringent than the burden of establishing her other claims, we focus first on her asylum claim. *Cui v. Garland*, 71 F.4th 592, 598 (7th Cir. 2023). Said another way, if Patel cannot establish eligibility for asylum, her remaining claims fail as well. *Id.*

When, like here, the Board adopts the IJ's decision and provides additional reasoning, we review both opinions. *Id.* at 599. In this case, the Board affirmed the IJ's adverse credibility determination. “Our review of this determination is deferential.” *Id.* at 600. “We uphold the immigration judge's factual findings”—like an adverse credibility determination—“so long as they are supported by substantial evidence.” *Id.* (citation omitted). In general, credibility findings “are overturned only in ‘extraordinary circumstances.’” *Id.* (citation omitted).

For Patel to qualify for asylum, she must prove that she is a refugee. 8 U.S.C. § 1158(b)(1)(B)(i)–(ii). To establish the truth of her claim, Patel relied primarily on her testimony. § 1158(b)(1)(B)(ii) (noting that an applicant's bare testimony may be sufficient to sustain her burden, assuming the “testimony is credible, is persuasive, and refers to specific facts”).

Testimony is credible if, among other things, the applicant's written and oral statements are consistent with each other and internally consistent. § 1158(b)(1)(B)(iii). Any non-trivial inconsistency is enough for an immigration judge to make an adverse credibility finding against an asylum applicant, assuming the IJ gives specific and

cogent reasons for the determination. *Id.*; *Cui*, 71 F.4th at 599. An inconsistency is trivial when it deals with a minor discrepancy like the “precise time” of a traumatic event. *Ferreira v. Lynch*, 831 F.3d 803, 811 (7th Cir. 2016). On the other hand, discrepancies are not trivial when they involve wide variations in dates of key events on an applicant’s timeline. *See, e.g., Krishnapillai v. Holder*, 563 F.3d 606, 617–18 (7th Cir. 2009) (three-month difference in date petitioner was arrested and two-month difference in date petitioner left country). “Corroborating evidence is essential to bolster an otherwise unconvincing case, but when an asylum applicant does testify credibly, ‘it is not necessary for [her] to submit corroborating evidence in order to sustain her burden of proof.’” *Uwase v. Ashcroft*, 349 F.3d 1039, 1041 (7th Cir. 2003) (citation omitted).

B. Analysis

1. Adverse Credibility Finding

Patel argues that the adverse credibility finding was not supported by substantial evidence. She contends that the discrepancies the Immigration Judge flagged were “not material and central to her persecution claim,” so the Board erred in upholding the adverse credibility finding.

We disagree. The IJ’s adverse credibility finding—as affirmed by the Board—was supported by substantial evidence for two reasons. First, Patel’s oral statements varied from her written statement and the record in non-trivial ways. Second, the IJ and Board sufficiently explained why they found Patel not credible. That’s enough—both under the asylum law and our caselaw—to support an adverse credibility finding. *See* 8 U.S.C. § 1158(b)(1)(B); *e.g., Cui*, 71 F.4th at 599.

Patel’s inconsistencies were not trivial because the record reveals wide variations in dates of key events. For example, Patel testified that she sought an American visa after she was raped. But government records show visa applications that were denied months before the rapes allegedly took place. Additionally, her recounting of how many times she was raped and who raped her varied significantly. What’s more, Patel testified that she started dating Takul in 2015, while she was in college. But her asylum application noted she graduated in 2013, and yet she testified that she graduated in 2014.

Patel insists that these inconsistencies were “not material and central to her persecution claim.” But that’s “legally irrelevant,” as an IJ may base an adverse credibility finding on any non-trivial inconsistency, regardless of whether it’s “material” or “central” to the application. *Munoz-Rivera v. Garland*, 81 F.4th 681, 688–89 (7th Cir. 2023). To the extent Patel meant to argue that the inconsistencies were trivial,

that's off the mark, too. The IJ did not base her adverse credibility finding on something like Patel's failure to pinpoint the "precise time" of when she was raped. *See Ferreira*, 831 F.3d at 811. Instead, the discrepancies were more fundamental, involving wide variations in the timing of key events, the participants in the alleged sexual assault, and the inconsistencies in the pre-testimony written statement to the testimony given at the hearing. *See Krishnapillai*, 563 F.3d at 617–18.

For those reasons, the IJ found Patel not credible because the story "on [Patel's] written application" and "the facts as established" were significantly "different than her oral testimony." The Board affirmed, as these discrepancies "pertained to material and central aspects of [Patel]'s persecution claim." Patel's varying timelines of key dates and facts of what happened diminished the credibility of her claim. The conflicts in Patel's testimony were not just small and minor inconsistencies but went to the heart of her asylum claim regarding whether the rape occurred and whether that harm was the reason for her travel to the United States. This was an adequate basis for an adverse credibility finding.

Finally, Patel suggests that the IJ should have considered that her discrepancies were caused by the "traumatic nature of the events described." But, as the government notes, this argument was never raised below. That means this argument is unexhausted, so we can't consider it. 8 U.S.C. § 1252(d)(1); *Munoz-Rivera*, 81 F.4th at 687–88.

In sum, substantial evidence supports the IJ's adverse credibility finding, as affirmed by the Board.

2. Lack of Sufficient Corroboration

To bolster her otherwise unconvincing testimony, Patel needed to submit corroborating evidence to support her asylum claim and meet her burden of proof. *Xiang v. Lynch*, 845 F.3d 306, 309 (7th Cir. 2017); 8 U.S.C. § 1158(b)(1)(B)(ii). The IJ found that she didn't do so. In particular, the IJ noted that there was no evidence to verify the disputed parts of Patel's story—no medical records to support that she had an abortion in the United States; no statement from her brother or from her parents to confirm what happened in India; no college diploma or transcript to clear up when she started dating Takul; and no statements from any of the individuals in the United States who were providing her assistance. The Board affirmed this finding.

Patel has two arguments as to why this was an error. First, she contends that her affidavits from family friends and general country condition reports were sufficient to corroborate her claim. Second, Patel suggests that the Board and IJ failed to account for the "context and circumstances" that prevented her from producing additional

corroborating evidence. She insists that “obtaining such evidence can be difficult and sometimes impossible for asylum seekers.”

Neither argument persuades us. Patel needed to fill the holes in her story, and her limited evidence did not do so. As the IJ found, the family friends’ statements were not reliable as they failed to include information on how they had first-hand knowledge of Patel’s case. Moreover, the statements were vague, uncannily similar, and only alluded to bad things that happened to Patel. In addition, Patel submitted country conditions reports reporting that rape is a serious problem in India. Those reports deserve substantial weight, but they do not require an IJ to find that a particular asylum applicant’s allegations are credible, particularly given other credibility problems, such as those in Patel’s account. *E.g.*, *Munoz-Rivera*, 81 F.4th at 690 (upholding adverse credibility finding where IJ acknowledged country conditions report corroborated problem of domestic violence but found report standing alone did not require that petitioner’s account of her own experience be deemed credible).

Lastly, there was no error in the IJ faulting Patel for not bringing forward corroborating evidence. An IJ’s decision that corroboration is necessary can be reversed only if we believe a reasonable trier of fact is “compelled to conclude” that such corroborating evidence is “unavailable.” 8 U.S.C. § 1252(b)(4). But Patel has not argued that the evidence at issue—including medical records from the United States, school transcripts, and affidavits from her close family or contacts in the United States—is unavailable, just that they may be difficult to get. This is not enough. *See id.*

In sum, the IJ found Patel’s testimony unconvincing, but Patel declined to fill the gaps in her story with documents that would explain away any inconsistencies. In other words, Patel—who had counsel at the asylum hearing—did not put forward sufficient corroborating evidence to meet her burden of proof. This is fatal to her claim of asylum.

III. CONCLUSION

Without credible testimony or corroborating evidence, Patel could not meet her burden of proof for securing asylum. Because the burden for seeking asylum is lower than securing either withholding of removal or relief under the Convention Against Torture, Patel’s remaining two claims also fail. *See Cui*, 71 F.4th at 598.

Accordingly, we DENY Patel’s petition for review.