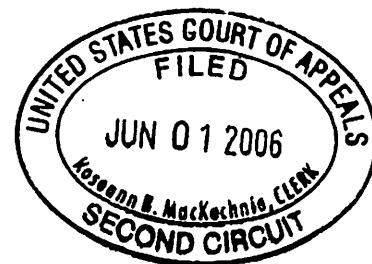


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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



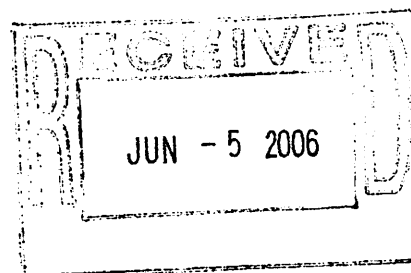
SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 1st day of June, two thousand and six.

PRESENT:

HON. JAMES L. OAKES,
HON. THOMAS J. MESKILL,
HON. ROBERT A. KATZMANN,
Circuit Judges.



Edmont Shurdho, Entela Shurdho, Joana Shurdho,
Joela Shurdho,

Petitioners,

v.

Nos.03-40645-ag (L);
03-40647 (Con); 04-4820 (Con)
NAC

Alberto R. Gonzales, Attorney General,

Respondent.

FOR PETITIONER: Michael P. DiRaimondo, DiRaimondo & Masi LLP, Marialaina L. Masi, Melville, New York.

FOR RESPONDENT: Paul J. McNulty, United States Attorney, George M. Kelley, III, Assistant United States Attorney, Norfolk, Virginia.

1 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
2 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, and DECREED, that the
3 petition for review is GRANTED, the BIA’s order is VACATED, and the case is REMANDED
4 to the BIA for further proceedings in accordance with this decision.

5 Edmont Shurdho petitions for review of a BIA decision affirming the decision of an
6 immigration judge (“IJ”) denying his applications for asylum, withholding of removal, and relief
7 under the Convention Against Torture (“CAT”), and a BIA decision denying his motion to
8 reopen. We assume the parties’ familiarity with the underlying facts and procedural history of
9 the case.

10 As a threshold matter, we note that our jurisdiction over this case is not affected by the
11 fact that the proceedings below were “asylum only” proceedings, rather than removal
12 proceedings. *See Kanacevic v. INS*, ___ F.3d ___, 2006 WL 1195925, at *2-3 (2d Cir. May 5,
13 2006).

14 When, as here, the BIA summarily affirms the decision of the IJ without issuing an
15 opinion, *see* 8 C.F.R. § 1003.1(e)(4), this Court reviews the IJ’s decision as the final agency
16 determination. *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S.*
17 *Dep’t of Justice*, 362 F.3d 155, 158 (2d Cir. 2004). This Court reviews the agency’s factual
18 findings, including adverse credibility determinations, under the substantial evidence standard.
19 *See* 8 U.S.C. § 1252(b)(4)(B); *Secaida-Rosales v. INS*, 331 F.3d 297, 306-07 (2d Cir. 2003).

20 The IJ found Shurdho not credible based on inconsistencies between his testimony, his
21 wife's testimony, and a letter from the police commander of the “Immediate Deployment Forces”
22 concerning when and why he left the police force. The IJ also found Shurdho incredible based

1 on the vagueness of his testimony concerning his alleged duties with the police force. As a result
2 of these findings, the IJ concluded that Shurdho had not established that he ever worked for the
3 police force.

4 The IJ's finding that Shurdho's testimony was vague with regard to his alleged duties with
5 the police force is not supported by the record. Although Shurdho did not testify in great detail
6 about his alleged police duties, he did provide details when asked about his activities. The IJ did
7 not indicate either why he considered these details to be vague or where he believed that Shurdho
8 failed to provide an adequate explanation. *See Jin Shui Qui v. Ashcroft*, 329 F.3d 140, 151 (2d
9 Cir. 2003); *Jin Chen v. U.S. Dep't of Justice*, 426 F.3d 104, 114 (2d Cir. 2005). Similarly, the IJ
10 also found Shurdho not credible because his testimony was vague concerning his involvement
11 with the Democratic Party. However, considering that both Shurdho and his wife provided
12 details of his involvement with the party, and neither was asked for further details, the finding on
13 this point cannot stand either. *See id.*

14 Further, the IJ found Shurdho incredible because, in his asylum application, Shurdho
15 indicated that the police began to threaten him for taking part in protests, while in his testimony,
16 he only mentioned one incident where he was slapped during a protest and did not indicate that
17 he received any threats from the police during this time. This finding is based on a misreading of
18 the record. In his asylum application, Shurdho claimed that "[a]fter 1997, [he] took part in
19 demonstrations and protests against the government . . . police began to threaten me for taking
20 part in these protests . . . [and] tell me that there was no place in Albania for people like me."
21 Similarly, in his testimony, Shurdho stated that after 1997, he and his family were threatened
22 because of his prior position as a police officer and because he was a member of the Democratic

1 Party, and that the police “hit [him] . . . and threatened me and about my family . . . and they
2 were telling [him] to take hands out of [his] party.”

3 While a number of the IJ’s reasons are supported by the record, these are not sufficient to
4 allow us to uphold the adverse credibility finding in light of the flaws noted above. *See Xiao Ji*
5 *Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 159-65 (2d Cir. 2006); *Cao He Lin v. U.S. Dep’t of*
6 *Justice*, 428 F.3d 391, 395 (2d Cir. 2005). Upon remand, if the agency finds that Shurdho has
7 established past persecution, it may wish to consider whether the return to power of the
8 Democratic Party in Albania through general elections in July 2005, *see Latifi v. Gonzales*, 430
9 F.3d 103, 106 n.1 (2d Cir. 2005), establishes a fundamental change in circumstances such that
10 Shurdho no longer has a well-founded fear of persecution, *see* 8 C.F.R. § 208.13(b). Because we
11 are remanding this case, Shurdho’s challenges to the BIA’s streamlining and to the denial of his
12 motion to reopen will not be considered by this Court. Moreover, because Shurdho did not raise
13 the issue of CAT before the BIA, he has failed to satisfy, with respect to that claim, the statutory
14 exhaustion requirement on which this Court’s jurisdiction is predicated. *See* 8 U.S.C. §
15 1252(d)(1); *Gill v. INS*, 420 F.3d 82, 86 (2d Cir. 2005).

16 For the foregoing reasons, we GRANT the petition, VACATE the BIA’s decision, and
17 REMAND to the BIA for further proceedings consistent with this decision. Having completed
18 our review, any stay of removal that the Court previously granted in this petition is VACATED,
19 and any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
20 request for oral argument in this petition is DENIED in accordance with Federal Rule of
21 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).