PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1770

OSCAR HERRERA-ALCALA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney General,

Respondent.

CAPITAL AREA IMMIGRANTS' RIGHTS COALITION,

Amicus Curiae.

No. 20-2338

OSCAR HERRERA-ALCALA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney General,

Respondent.

CAPITAL AREA IMMIGRANTS' RIGHTS COALITION,

Amicus Curiae.

On Petitions for Review of an Order of the Board of Immigration Appeals.

Argued: September 23, 2021 Decided: June 30, 2022

Before RICHARDSON and QUATTLEBAUM, Circuit Judges, and KEENAN, Senior Circuit Judge.

Petitions for review denied by published opinion. Judge Richardson wrote the opinion, in which Judge Quattlebaum and Senior Judge Keenan joined.

ARGUED: Christopher David Boom, DUQUE, KELLEY AND ASSOCIATES, PLLC, Doral, Florida, for Petitioner. James A. Hurley, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent. **ON BRIEF:** Brian M. Boynton, Acting Assistant Attorney General, Anna E. Juarez, Senior Litigation Counsel, Office of Immigration Litigation, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent. Adina Applebaum, CAPITAL AREA IMMIGRANTS' RIGHTS (CAIR) COALITION, Washington, D.C.; Benjamin R. Winograd, IMMIGRANT & REFUGEE APPELLATE CENTER, LLC, Alexandria, Virginia, for Amicus Curiae.

RICHARDSON, Circuit Judge:

Oscar Herrera-Alcala, a Cuban alien, petitions for review of the Board of Immigration Appeals decision denying his application for asylum, withholding of removal, and Convention Against Torture ("CAT") protection. But the government first argues that we should not hear this case, as venue lies in the Fifth Circuit. Interpreting the venue statute, we find that venue is proper in this court because the Immigration Judge completed the proceedings in Virginia, which is within our judicial circuit.

Finding we may decide the questions presented, we then reject the petition. The Immigration Judge found both the petitioner's testimony and his supporting evidence non-credible, and we defer to the Immigration Judge's factual findings because they are supported by substantial evidence. Given that deference, we deny the petition.

I. Venue is Proper in this Court

Before turning to the testimony and evidence, we must first decide whether Herrera-Alcala's petition is in the correct Court of Appeals. He illegally entered the United States at the Texas border. He alleged that he was tortured for his political protest in Cuba and sought asylum, withholding of removal, and CAT protection. The Department of Homeland Security ordered him to appear before an Immigration Judge at a Louisiana processing center.

The Immigration Judge held a videoconference hearing.[1] Herrera-Alcala appeared from a Louisiana correctional facility. The Immigration Judge, George Ward, sat in Virginia at the Falls Church Immigration Adjudication Center. After hearing testimony, the Immigration Judge issued an oral decision denying relief to Herrera-Alcala. After the Board of Immigration Appeals affirmed, Herrera-Alcala petitioned for review in the Fourth Circuit, which he contends is the proper venue for review under 8 U.S.C. § 1252(b)(2) because the Immigration Judge attended the hearing from Virginia. The Attorney General disagrees—arguing that § 1252(b)(2) requires the petition to be heard in the Fifth Circuit where Herrera-Alcala appeared for the hearing—and asks us to transfer the case there.

Section 1252(b)(2) specifies that a petition for review of an order of removal "shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." During the video conference hearing, Herrera-Alcala was in the Fifth Circuit (Louisiana) and the Immigration Judge was in the Fourth Circuit (Virginia).

We begin, of course, with the statutory text. The court of appeals with which the petition shall be filed is identified as the one for a specific "judicial circuit." In our federal system, judicial circuits are defined by geography. 28 U.S.C. § 41 (specifying that the Fourth Circuit, for example, is "constituted as follows . . . Maryland, North Carolina, South

[1] An immigration judge may proceed by teleconference or videoconference. 8 U.S.C. § 1229a(b)(2)(A)(iii), (iv).

Carolina, Virginia, West Virginia").[2] To answer which geographic circuit a petition for review "shall be filed," the statute directs us to where "the immigration judge completed the proceedings." The actor is the Immigration Judge and the action is "complet[ing] the proceedings." So the statute's text directs us to the geographic location where the Immigration Judge completed the proceeding. And here, the Immigration Judge sat in Virginia during the proceedings. So whatever action the Immigration Judge took to "complete[] the proceedings" must have occurred in the Fourth Circuit.

This straightforward reading of the statutory text aligns with our precedent. In *Sorcia v. Holder*, 643 F.3d 117, 123 (4th Cir. 2011), the Immigration Judge and alien were in the Eleventh Circuit (Georgia), but the government participated by teleconference from the Fourth Circuit (North Carolina). Though the hearing transcript and order both stated the hearing place was North Carolina, the Immigration Judge explained that "the Court [is] sitting in Atlanta." *Id.* (alteration in original). And the Order explained that "the oral decision" was the official opinion for review. *Id.* This Court noted that the "oral decision was undisputedly issued from Atlanta" where the Immigration Judge sat, and "we conclude[d] that Atlanta [was] the location where the proceedings were completed."[3] *Id.*

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[2] The one exception to this general rule is the Court of Appeals for the Federal Circuit, which has a composition extending to "[a]ll Federal judicial districts." Rather than by geography, the Federal Circuit's appellate jurisdiction is limited by subject matter, and the Federal Circuit does not have subject matter jurisdiction over immigration appeals. *See* 28 U.S.C. § 1291.

[3] Despite our conclusion that this Court lacked venue, we explained that "we have inherent authority to transfer a case to another circuit where both venue and jurisdiction exist." *Sorcia*, 643 F.3d at 122. We nevertheless denied the government's motion to (Continued)

In reaching that conclusion, the *Sorcia* court relied on *Ramos v. Ashcroft,* 371 F.3d 948, 949 (7th Cir. 2004), which it took to hold "that even when teleconferencing takes place, immigration proceedings are completed 'where the court is located and the order issued.'" *Sorcia*, 643 F.3d at 123 (quoting *Romas*, 371 F.3d at 949)[4] So *Sorcia* held that venue is proper where the immigration judge sits in a teleconference hearing. And its reasoning applies equally here.[5]

Even so, the government argues that the location of the petitioner, and not location of the Immigration Judge, should determine venue under § 1252(b)(2). But nothing in the statute permits that outcome. The prior venue provision that applied until 1996, when § 1252(b)(2) was enacted, permitted venue where the petitioner resided as an alternative to where "the administrative proceedings . . . were conducted." 8 U.S.C. § 1105a(a)(2)

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transfer to the Eleventh Circuit, filed pursuant to 28 U.S.C. § 1631, because the "interests of justice" did not require the transfer. *Id.*

[4] *Ramos* relied on the fact that the Immigration Judge was at his assigned work location. 371 F.3d at 949 (holding that the Immigration Judge's office would have been where the Immigration Judge completed the proceeding even if the immigration had conducted the proceeding from a vacation home). Here, the Immigration Judge was at his assigned work location in Virginia during the proceedings. So we need not address whether an Immigration Judge acts from his assigned work location while physically located elsewhere, such as while on vacation.

[5] Other circuits may have reached different conclusions with little discussion of the statutory text. *See, e.g.*, *Luziga v. Att'y Gen.*, 937 F.3d 244, 250 (3d Cir. 2019) (suggesting that "venue is proper where an IJ sitting outside our Circuit appears by video conference within our Circuit"); *Medina-Rosales v. Holder,* 778 F.3d 1140, 1143 (10th Cir. 2015) ("The charging document establishes the hearing location, regardless of the location of the IJ and the holding of a video conference hearing."); *Llapa-Sinchi v. Mukasey*, 520 F.3d 897, 901 (8th Cir. 2008) (holding that venue depends on "where the administrative hearings were completed").

(1994). But in enacting § 1252(b)(2), Congress removed that alternative venue provision. And it focused the statute on the location of the Immigration Judge by changing the phrase from a passive one that did not identify the actor (where the "administrative proceedings . . . were conducted," § 1105a(a)(2) (1994)), to an active one that named the Immigration Judge as the sole actor (where "the *Immigration Judge* completed the proceedings," § 1252(b)(2)). So there is no textual basis to conclude that the alien's location determines venue.

Despite the statutory language, the government asks that we defer to the Board of Immigration Appeals's holding that "removal proceedings before the Immigration Judge in this matter were completed in Jonesboro, Louisiana." A.R. 13 n.1.[6] The Board based this conclusion on the petitioner's location. *See* A.R. 13 n.1 ("The respondent was located in the jurisdiction of the United States Court of Appeals for the Fifth Circuit, and we will analyze his claims under the precedential decisions of the Board and the Fifth Circuit."). But the text of § 1252(b)(2) unambiguously focuses on the Immigration Judge and does not reference where the petitioner resides or participates in the proceeding, so deference to the agency is not appropriate here. *See Julmice v. Garland*, 29 F.4th 206, 207 (4th Cir.

[6] There are two "Administrative Record" documents in the ECF filings, ECF No. 12 and No. 38, as well as a "Joint Appendix," ECF No. 33. By "A.R." we refer to the document at ECF No. 38.

2022) (noting that we defer to the Board on questions of statutory interpretation "[i]f—and only if—our interpretive toolkit leaves us with a genuine ambiguity").[7]

Amicus helpfully submitted a brief here arguing that the place where the Immigration Judge completed the proceedings was neither Virginia nor Louisiana, but Minnesota—the location of the administrative control court, which performed back-end clerical work such as of accepting filings and transmitting the Immigration Judge's order to petitioner.[8] Though the judge and parties were not located there, amicus argues that this is the place where the proceedings *as a whole* were completed because it is the place where the case is formally closed and from which the written order is sent. Minnesota is also considered, by regulation, the "venue" of the proceedings. *See* 8 C.F.R. §§ 1003.14, 1000.20. Perhaps under the pre-1996 statute, the administrative control court in Minnesota might be where "the administrative proceedings . . . were conducted." 8 U.S.C. § 1105a(a)(2) (1994). But § 1252(b)(2) does not ask where the administrative control court is located, where regulatory "venue" exists, or even where the proceedings are concluded. The statute asks where the "Immigration Judge completed the proceedings." § 1252(b)(2). And there can be no doubt the Immigration Judge was in Virginia.

[7] Even if ambiguity existed, the Board's claim is not entitled to deference because it comes from only a single-member decision and thus does not create agency precedent. *Martinez v. Holder*, 740 F.3d 902, 909–10 (4th Cir. 2014).

[8] Minnesota is in the Eighth Circuit. 28 U.S.C. § 41.

Venue under § 1252(b)(2) depends on the location of the Immigration Judge. And the Immigration Judge was in Falls Church, Virginia, making venue proper in the Fourth Circuit.

II. Asylum, Withholding of Removal, and CAT Protection

Having found that Herrera-Alcala is in the correct circuit, we may now turn to the merits. He sought relief based on his mistreatment after he spoke out against the Cuban government. The Immigration Judge found that Herrera-Alcala was not credible and also concluded that even if he were credible, his allegations failed to warrant relief. The Board of Immigration Appeals affirmed.

A. Immigration Proceedings

To understand the board's decision, we must consider Herrera-Alcala's various claims. At the hearing, Herrera-Alcala claimed to be a political dissident fleeing Cuba after years of intensifying harassment by the government reached an unbearable level. He claimed Cuban police seized equipment he used for work as a carpenter around March 2017, and that they detained him in March 2017, October 2018, and November 2018—though they did not otherwise mistreat him during detention. And he said that in December 2018, he protested a new Cuban constitution by holding a "Free Cuba" banner at a public meeting. After the rally, he claimed police arrested him, and he was then pushed into a blood-splattered underground cell, beaten for about five minutes with batons, deprived of water for three days, given only food so sweet he could not eat it, and then released after three days. He claimed he did not see a doctor after his release and returned to work after six days of recovery on sugar water and soup. And he claimed the police

returned a few weeks later in January 2019, issuing a notice of seizure for his carpentry supplies and ordering him to appear again.

He then testified that he fled to a relative's house after the January 2019 police encounter and obtained a Cuban visa to travel to Panama. He fled to Panama before later entering the United States. He explained that he had wished to flee Cuba earlier but delayed for fear that his daughter's mother in Cuba would not let his daughter leave. But he also testified that his daughter's mother had abandoned them and been absent since his daughter was two years old. Herrera-Alcala's wife—Yaleimis Alvarez Figueredo, an American lawful permanent resident—testified that she was visiting Cuba when he was arrested in December 2018 and tried to persuade him to see a doctor for his injuries. Herrera-Alcala later submitted documentary support for his claims, including a 2019 police report showing no criminal record; notices to appear from Cuban police in March 2017, A.R. 434, October 2018, A.R. 328, November 2018, A.R. 331, and January 2019, A.R. 334; authorizations for the police to confiscate his property in April 2017, A.R. 440, September 2018, A.R. 437, and January 2019, A.R. 337; human-rights reports on Cuba; photographs; and a Cuban marriage certificate showing his union with Figueredo. He also provided written statements from family and neighbors related to his December 2018 and January 2019 police encounters. One of those statements, by a neighbor, stated that police harassed and detained Herrera-Alcala for his political views. A.R. 351.

But much of the testimony Herrera-Alcala gave during his merits hearing was notably absent from the credible-fear interview he gave shortly after his initial entry. There, he identified only two incidents with the Cuban police: December 2018 and January

2019. A.R. 480–81 (asking Herrera-Alcala to give dates for how many times he was threatened by police). He did not mention any other police encounters even when asked. He did not mention any other detention. And he did not mention the pre-2019 tool confiscations.

Due in part to these inconsistencies and omissions, the Immigration Judge found that Herrera-Alcala's testimony was non-credible, and so were the supporting affidavits and testimony. He also concluded that Herrera-Alcala's claims, even if true, did not rise to the level of persecution or create a well-founded fear of future persecution. The Board agreed, affirming the Immigration Judge's findings, and finding that the outcome was unlikely to be changed by new evidence Herrera-Alcala wished to introduce—including a *Lancet* article on rehydration.

B. Standard of Review

Though we review the opinions of both the Immigration Judge and Board, we consider the Immigration Judge's decision only to the extent the Board's decision adopted it or incorporated it. *Garcia Hernandez v. Garland*, 27 F.4th 263, 266 n.* (4th Cir. 2022). The Board's legal conclusions are reviewed de novo. *Id.* at 268. But we review factual findings, including adverse credibility findings, only for substantial evidence. *Cordova v. Holder*, 759 F.3d 332, 337 (4th Cir. 2014). Under the substantial evidence standard, even if we find "the record plausibly could support two results: the one the IJ chose and the one the petitioner advances, reversal is only appropriate where the court finds that the evidence not only supports the opposite conclusion, but *compels* it." *Tang v. Lynch*, 840 F.3d 176, 180 (4th Cir. 2016) (cleaned up). We must uphold the Immigration Judge's decision unless

the record is so compelling that "any reasonable adjudicator would be compelled to conclude to the contrary." *Ai Hua Chen v. Holder*, 742 F.3d 171, 177 (4th Cir. 2014) (quoting 8 U.S.C. § 1252(b)(4)(B)).

C. The Denial of Asylum Was Supported by Substantial Evidence

To qualify for asylum, Herrera-Alcala must show he "is a refugee." 8 U.S.C. § 1158(b)(1)(A). A "refugee" includes any person who is unable or unwilling to return to his home country "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." § 1101(a)(42)(A).

So an applicant can obtain asylum relief by showing he is unable or unwilling to return to his home county because of past persecution[9] or a fear of future persecution that is both subjectively held and objectively reasonable. *Li v. Gonzales*, 405 F.3d 171, 176–77 (4th Cir. 2005). Persecution "does not include every sort of treatment that our society regards as offensive." *Id.* (quoting *Gormley v, Ashcroft*, 364 F.3d 1172, 1176 (9th Cir. 2004)). It is "an extreme concept" that does not include "brief detentions and repeated interrogations by governmental officials over a substantial period of time." *Id.* And "economic penalties 'rise to the level of persecution' only if such 'sanctions are sufficiently

[9] "An applicant who demonstrates that he was the subject of past persecution is presumed to have a well-founded fear of persecution" but the "presumption may be rebutted if the immigration judge finds by the preponderance of evidence that (1) there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution or (2) the applicant could avoid future persecution by relocating to another part of his native country." *Ngarurih*, 371 F.3d at 187 (citing 8 C.F.R. § 208.13(b)(1)(i)).

harsh to constitute a threat to life or freedom.'" *Id.* (quoting *Ahmed v. Ashcroft*, 396 F.3d 1011, 1012 (8th Cir. 2005)).

As the applicant bears the burden to show he is a refugee, the credibility of his testimony is often paramount. *Camara v. Ashcroft*, 378 F.3d 361, 369 (4th Cir. 2004). "The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee." 8 U.S.C. § 1158(b)(1)(B)(ii). An adverse credibility determination supported by substantial evidence generally dooms an asylum claim unless the application can prove actual past prosecution through independent objective evidence. *Camara*, 378 F.3d at 369; *Rusu v. U.S. I.N.S.*, 296 F.3d 316, 323 (4th Cir. 2002) (describing an adverse credibility determination as "almost insurmountable").

An adverse credibility determination is supported by substantial evidence so long as the record as a whole supports it by "more than a mere scintilla" of evidence. *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). "There is no presumption of credibility," and though an Immigration Judge must provide reasons for the adverse credibility finding, those reasons need not go to the heart of the applicant's claim. 8 U.S.C. § 1158(b)(1)(B)(iii) (enumerating permissible grounds for credibility findings).[10] Any inconsistency or omission may be

[10] In evaluating the applicant's credibility, the Immigration Judge has broad discretion to "base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, (Continued)

considered, so long as the totality of the circumstances establishes that an asylum applicant is not credible. Even a "single testimonial discrepancy, particularly when supported by other facts in the record, may be sufficient to find an applicant incredible in some circumstances." *Ilunga v. Holder*, 777 F.3d 199, 207 (4th Cir. 2015). This includes inconsistencies or omissions that come from comparing statements in a credible-fear interview to later testimony. *Hui Pan v. Holder*, 737 F.3d 921, 929–30 (4th Cir. 2013); *see* 8 U.S.C. § 1158(b)(1)(B)(iii) (permitting the factfinder to base a credibility determination on "the consistency between the applicant's . . . written and oral statements" and "other evidence of record"). And once inconsistencies and omissions are identified, the agency need not accept the petitioner's explanation for them. *See Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 358–59 (4th Cir. 2006).

1. The Immigration Judge's Adverse Credibility Determination Was Supported by Substantial Evidence

The Immigration Judge found that Herrera-Alcala's testimony was not credible because he omitted any mention of his claimed run-ins with police before December 2018 in both the credible-fear interview and the asylum application, his testimony conflicted with supporting testimony and affidavits, his claims of recovering from harsh confinement

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the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor." § 1158(b)(1)(B)(iii).

and a severe beating without medical attention were implausible, and it was implausible the Cuban Government would allow him to freely obtain a visa if he was targeted as a political dissident. Because of the contradictions and implausibility of events, he also found the supporting evidence non-credible.

i. Herrera-Alcala's Omissions

The Immigration Judge noted that Herrera-Alcala's credible-fear interview omitted several important police encounters, in November 2017, October 2018, and November 2018, which he later mentioned at the immigration hearing. A.R. 156-57. The interviewer warned him to include everything by asking about any "other incidents that he wanted to tell anybody about." A.R. 156.

Even a minor inconsistency can support an adverse credibility finding. *See Ilunga*, 777 F.3d at 207 (citing 8 U.S.C. § 1158(b)(1)(B)(iii)). Omissions are a kind of inconsistency. *Herrera-Martinez v. Garland*, 22 F.4th 173, 186 (4th Cir. 2022). Multiple minor omissions can cumulatively detract from credibility. *Djadjou v. Holder*, 662 F.3d 265, 275 (4th Cir. 2011). And when an omitted incident is of the same kind as those central to the petitioner's claims, the incident goes "to the center of his testimony" and thus is almost always material. *Herrera-Martinez*, 22 F.4th at 186 (finding that the omission of assault by criminal organization was a material omission, when grounds for asylum claim was danger from drug trafficking gangs).

Police persecution is an important part of Herrera-Alcala's narrative, so the record supports the Immigration Judge's finding this was a material omission. And an

immigration judge may properly consider a material omission to undermine a petitioner's credibility.

We now turn to Herrera-Alcala's objections. Herrera-Alcala argues that an omission should not support findings of adverse credibility, citing *Matter of E-F-H-L-*, 26 I. & N. Dec. 319, 322 (BIA 2014) ("[I]f an applicant omits relevant facts from a written asylum application but subsequently testifies to those facts before the Immigration Judge, the omission from the written application does not necessarily support a finding that the applicant has not testified credibly."). But that conclusion is not supported by the Board decision he relies on, which says it "does *not necessarily* support" rather than cannot support. *See id.; see also Herrera-Martinez*, 22 F.4th at 186; *Djadjou*, 662 F.3d at 273 ("[A] few . . . omissions . . . can be sufficient for the agency to make an adverse credibility determination as to the applicant's entire testimony.").[11]

Herrera-Alcala also claims the Immigration Judge failed to acknowledge key aspects of his explanation for why he omitted the pre-December-2018 meetings to the asylum officer. Herrera-Alcala claims that the Immigration Judge erroneously concluded that he told the asylum officer there were no "other incidents he wanted to tell anybody about." He says he told the asylum officer that Cuban police had given him multiple citations, and because he had only one citation after December 2018, the other incidents must have been earlier. He also argues this kind of omission should not be weighed against

[11] These must of course be inconsistencies in the applicant's actual testimony, and not the result of a translator's error which artificially distorts the actual testimony. *Ilunga*, 777 F.3d at 208.

him because the asylum officer told him to answer only what he was asked, and the interviewer only asked him follow up questions about the December 2018 and January 2019 incidents. For that reason and others, he argues that the application and interview were confusing.

But while the interview and application may be confusing, they can also reveal inconsistences and contribute to an adverse credibility finding. The Immigration Judge's determination of whether an inconsistency is due to confusion or chicanery is a factual finding to which we defer when supported by substantial evidence. *Hui Pan*, 737 F.3d at 926. And there is not sufficient contrary evidence to overturn that determination here.

Herrera-Alcala also argues the Immigration Judge did not sufficiently credit the possibility that he would not list those other incidents to the asylum officer because they were not why he left the country. But that argument is questionable, given that he later referenced these incidents in his asylum hearing and even said that his "life changed completely" after the March 2017 incident.[12] A.R. 249. This might be an understandable and natural omission. But a reasonable factfinder could also conclude that Herrera-Alcala would have told the asylum officer about such life-changing incidents in detail.

ii. Implausibility of Claimed Events

The Immigration Judge also concluded Herrera-Alcala's testimony was not credible because his rapid recovery from what he described as a harsh beating and confinement

[12] While Herrera-Alcala argues on appeal that this comment was a reference to police interference with his carpentry business and not the other incidents, that is ambiguous, and the Immigration Judge's inference was reasonable.

without food and water, using only sugar water and soup without medical attention, was implausible. A.R. 157. And he also found that it was implausible that Herrera-Alcala was heavily targeted by the Cuban government yet easily allowed to obtain a visa from the Panamanian embassy and leave the country, based on the State Department report on Cuban country conditions, which reported that the Cuban government restricts travel by dissidents.

Recovery without Medical Attention. An Immigration Judge should evaluate "the inherent plausibility of the applicant's or witness's account[.]" 8 U.S.C. § 1158(b)(1)(B)(iii); *see Jingdong Zheng v. Holder*, 369 F. App'x 519, 521 (4th Cir. 2010). Like other aspects of credibility, plausibility is to be evaluated with a "commonsense approach" that considers "the totality of the circumstances." *Hui Pan*, 737 F.3d at 928 (quoting *Singh v. Holder*, 699 F.3d 321, 329 (4th Cir. 2012), and then 8 U.S.C. § 1158(B)(1)(b)(iii)). And that includes commonsense observations about medical issues. *See, e.g.*, *Yan v. Mukasey*, 509 F.3d 63, 67–68 (2d Cir. 2007); *Qing Li v. Wilkinson*, 840 F. App'x 152, 154 (9th Cir. 2021). So the Immigration Judge's decision was supported by substantial evidence in determining that Herrera-Alcala's claim of mistreatment and recovery was implausible, and the Board was within its discretion to conclude a *Lancet* article on rehydration would not likely change the outcome.

Herrera-Alcala argues that the Immigration Judge's reasoning ignored the time it took to recover and return to work. But the Immigration Judge was aware of the time of recovery (characterizing it as a "couple days of rest," A.R. 160). And his reasoning focused on the implausibility that Herrera-Alcala recovered from alleged horrific treatment by

drinking sugar water, with no medical attention. Nothing in the record indicates the Immigration Judge's implausibility finding rested on whether the recovery with no medical attention took three days or six.

Herrera-Alcala's Freedom to Leave Cuba. The Immigration Judge may also make predictions about how law enforcement authorities in a country would act if the Judge's conclusions are supported by common sense or other evidence. § 1158(b)(1)(B)(iii) (allowing an immigration judge to base a credibility determination on "the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions)"); *see Singh*, 699 F.3d at 326, 335 n.16. Here, the Immigration Judge relied on a State Department report stating that the Cuban government restricts travel for "many former political prisoners." A.R. 77. So his conclusion that Herrera-Alcala would likely not be allowed to travel freely if he were a political dissident, was supported by substantial evidence.

Herrera-Alcala argues the Immigration Judge should not have relied on the State Department report to find Herrera-Alcala's claims non-credible because he was not a "political prisoner" since he has no criminal record, making the report inapposite. But Herrera-Alcala claimed he was imprisoned in a "dungeon" and mistreated for his political views, A.R. 480, so a reasonable factfinder could conclude Herrera-Alcala's claims, if true, would make him something like a political prisoner. It would then be reasonable to

compare his claims with Cuba's treatment of political prisoners and conclude that he would normally not be permitted to leave if he suffered the persecution he alleged.[13]

Herrera-Alcala also claims the reports are not accurate; but evaluating the credibility of such a report is a factual finding. We must defer to the Immigration Judge in weighing the reports unless every "reasonable adjudicator would be compelled to conclude to the contrary." *Cordova*, 759 F.3d at 337. And Herrera-Alcala has not made such a showing. Furthermore, Herrera-Alcala's own testimony that the Cuban government disapproved of him traveling even before the December 2018 incident supports the inference that the Cuban government did allow political dissidents, and specifically Herrera-Alcala, to travel freely. *See* A.R. 254.

iii. Credibility Issues With Other Supporting Evidence

An adverse credibility finding against the petitioner himself is an "almost insurmountable" barrier to asylum. *Rusu*, 296 F.3d at 323. But there are—perhaps rare—circumstances where outside evidence can still support an asylum claim. *Djadjou*, 662 F.3d at 275. So we turn to the Immigration Judge's treatment of this evidence.

[13] Herrera-Alcala's argument could also be interpreted as a claim that the report would not apply to him because there was not record of his arrests, so the Cuban Government would not be alerted to his later travels. But the report—and Herrera-Alcala's own claims, such as being approached by police shortly after returning from a trip with his wife—at least suggest the Cuban government keeps close tabs on political dissidents even without criminal records. *See* A.R. 71 ("[G]overnment officials prevented independent journalist Anay Remon Garcia from boarding an airplane to leave the country. They did not cite a reason and did not accuse her of any crime."). And the Immigration Judge explicitly based his conclusion on the treatment of "political dissidents," not merely political prisoners.

The Immigration Judge's adverse credibility finding was also supported by factual discrepancies between Herrera-Alcala's testimony and the supporting testimony and affidavits of his wife and mother,[14] and his neighbors, Tellez and Navarro.[15] As a result of the inconsistencies and omissions, the Immigration Judge discredited the affidavits, and chose to "give[] them very little to no weight." A.R. 158; A.R. 174. Identifying factual discrepancies and finding testimony or evidence non-credible as a result is well within the Immigration Judge's discretion when supported by substantial evidence. While the inconsistencies need not relate to the core of Herrera-Alcala's claims, *Singh*, 699 F.3d at 328–29, here the Immigration Judge specifically stated that some of the inconsistencies went to the core of Herrera-Alcala's claims. *See, e.g.*, A.R. 157 (noting the January 2019

[14] Along with Petitioner's omission of any police harassment before December 2018 in his credible fear interview, A.R. 156, the Immigration Judge also noted a discrepancy between the Petitioner's testimony and his wife's testimony about the January 2019 incident, with Herrera-Alcala claiming he was at a work site when he was arrested, while his wife said he was at home with his cousin, A.R. 156–57. And while some of Herrera-Alcala's wife's testimony matched his, the Immigration Judge gave it limited weight, because she was likely to be biased in his favor. A.R. 159; *see Djadjou*, 662 F.3d at 276 ("Letters and affidavits from family and friends are not objective evidence in this context."). The Immigration Judge also noted inconsistencies between respondent's testimony and his mother's affidavit. Herrera-Alcala claimed he was given a notice of confiscation of his tools in January 2019, while his mother's affidavit said the tools were actually confiscated at that time, A.R. 157. His mother also claimed he was held five days without food and water, but Herrera-Alcala claimed it was three. A.R. 157.

[15] The Immigration Judge also noted inconsistencies between Herrera-Alcala's testimony and his neighbors' affidavits. Herrera-Alcala testified that the sector chief visited him a single time in January 2019, but the Navarro affidavit stated there were multiple visits from the sector chief. A.R. 158. Another neighbor, Tellez, stated in an affidavit that Herrera-Alcala was pressured into participating in political events, but Herrera-Alcala did not mention any pressure aside from forcing attendance at the debate on the new Constitution. A.R. 158.

incident was why Herrera-Alcala claimed to have left Cuba so discrepancies related to it were material). The Immigration Judge's findings were supported by plausible inferences from the record and thus were supported by substantial evidence. And most or all of these affidavits were entitled to little weight anyway. For "as we have previously noted, affidavits from friends and family are hardly the independent evidence that can corroborate the testimony of a petitioner which has already been deemed incredible." *Herrera-Martinez*, 22 F.4th at 187 (cleaned up).

Herrera-Alcala argues that the Immigration Judge erred in concluding that his testimony that he was working during the January 2019 incident conflicted with his wife's testimony that he was at home. The error was allegedly due to the Immigration Judge failing to understand Herrera-Alcala worked from home on his patio. But even Herrera-Alcala acknowledged before the Board that his "answer was ambiguous and thus the IJ might have understandably interpreted Mr. Herrera-Alcala's answer as affirming that it was correct that he was not at home at this time." A.R. 46 (Herrera-Alcala's brief before the Board). And if the answer "was ambiguous," and if we disagreed with the Immigration Judge's understanding of the testimony, on this record, we are not compelled to reach an opposite conclusion. The Immigration Judge "might have understandably interpreted" it as inconsistent with his wife's testimony, then the conclusion of inconsistency is supported by substantial evidence.

Herrera-Alcala further argues that the Immigration Judge misrepresented his testimony about being visited by a police sector chief. The Immigration Judge determined that Herrera-Alcala testified that the sector chief only visited him once, and his testimony

contradicted the Navarro affidavit, which discussed multiple visits by the sector chief. A.R. 158. Herrera-Alcala claims this is a clear factual error because he testified to being visited by the sector chief multiple times. Herrera-Alcala may have said that the sector chief visited multiple times. *See* A.R. 250. But the Immigration Judge seems to be discussing Herrera-Alcala's more in-depth, detailed discussion of various police run-ins. And in those detailed descriptions, Herrera-Alcala only mentioned the sector chief when discussing the January 2019 incident, and not when discussing any of the other incidents. A.R. 158, 231, 264. On this record, we defer to the Immigration Judge's factual findings as supported by substantial evidence, and we cannot say this was an error.

Herrera-Alcala also argues that his testimony that government officials "basically . . . were forcing people to attend" a debate in December 2018, A.R. 256, rebuts the Immigration Judge's conclusion that the testimony contradicts an affidavit. The Immigration Judge found there was a contradiction between Herrera-Alcala, who "never testified about being forced to participate in anything," A.R. 158, and the Tellez affidavit, which claimed the government forced Herrera-Alcala to participate in political events. But context from the transcript shows the Immigration Judge was referring to the lack of testimony by Herrera-Alcala that he was forced into "activities such as voting, as far as preparing for Cuban holidays or memorials for the death of Fidel Castro or anything like that." A.R. 155. And the Immigration Judge was correct; Herrera-Alcala did not testify about participating in such events. It is not unreasonable to think Herrera-Alcala would have mentioned such pressure if it existed, so this is an acceptable finding by the Immigration Judge.

Furthermore, Herrera-Alcala argues the Immigration Judge correctly identified inconsistencies between his mother's affidavit and Herrera-Alcala's testimony but relied too strongly on these inconsistencies. But the Immigration Judge was free to rely on these for the credibility determination. *See Djadjou*, 662 F.3d at 273–74.

Some of these inconsistencies may seem rather trivial to us, but the Immigration Judge is in the best position to evaluate the candidate's demeanor, voice, and body language, so we employ a highly deferential standard of review on such issues, much as we do with juries. And for this reason, we often allow seemingly minor omissions to form the basis of an adverse credibility determination. *See Ilunga*, 777 F.3d at 207. And here, there are many cumulative omissions and discrepancies, not just one.

Herrera-Alcala also argues that he did in fact reference fines received in Cuba, while the Immigration Judge found he did not, and thus the Immigration Judge wrongly discounted some affidavits. This does appear to be an error, but the Immigration Judge stated these inconsistencies "don't serve as the basis for finding respondent not credible" though they are "a factor for the court." A.R. 158. Because the Immigration Judge had other adequate grounds to discount both Herrera-Alcala's testimony and the supporting affidavits, we cannot reverse the Immigration Judge's decision based on this single error. *Ngarurih*, 371 F.3d at 190 n.8.

Herrera-Alcala claims that the Immigration Judge's credibility decision was not cogently reasoned because the Immigration Judge failed to weigh evidence that goes to prove the pre-December-2018 interviews happened. Herrera-Alcala's points to documentary evidence supporting those events, particularly his earlier police citations.

And he also argues that the Immigration Judge arbitrarily dismissed the possibility that Herrera-Alcala omitted the earlier incidents so that he could discuss them in more detail at a later hearing. And "we must ensure that unrebutted, legally significant evidence is not arbitrarily ignored by the factfinder and that the agency does not base its decision on only isolated snippets of the record while disregarding the rest.'" *Ai Hua Chen*, 742 F.3d at 179 (cleaned up). But the Immigration Judge did not "arbitrarily ignore" the documentary evidence as claimed, but specifically considered it, and decided to "not credit that explanation as a reason for these inconsistencies." A.R. 173.[16]

Herrera-Alcala claims the Immigration Judge should have reversed his adverse credibility determination after Herrera-Alcala presented some additional evidence to corroborates his story. "An immigration judge, however, is not required to accept every plausible explanation offered by an asylum applicant." *Hui Pan*, 737 F.3d at 930. Such evidence can—but does not always—restore credibility. Immigration Judges have broad discretion to weigh inconsistencies or explanations as they see fit, and to determine whether the evidence restores credibility and if so to what extent. *See Singh*, 699 F.3d at 329–30.

iv. Totality of the Circumstances

Any one of these discrepancies, standing alone, might not justify an adverse credibility determination. But taken together, they plausibly support the adverse inference that Herrera-Alcala was exaggerating the extent of his mistreatment. Some of the

[16] We read the "documentary evidence" as referring to the citations Herrera-Alcala submitted. However, even if this also refers to his neighbors' and mother's affidavits, the Immigration Judge found those not to be credible for other reasons.

discrepancies with or among the supporting evidence might also seem minor. But taken together, these discrepancies provide a basis for the Immigration Judge's adverse credibility determination. Because we are not "compelled" to reverse the result, we therefore must affirm the Immigration Judge's factual finding. *Cordova,*, 759 F.3d at 337.

2. The Adverse Credibility Findings Are Enough to Support Denial of Asylum

An adverse credibility finding against the petitioner himself is an "almost insurmountable" barrier to a petition for asylum. *Rusu*, 296 F.3d at 323. And here, the Immigration Judge also found the other evidence to be insufficient to meet petitioner's burden of proof. After these determinations, there was no way petitioner could not meet his burden of proof. Since these determinations were supported by substantial evidence, so was the denial of asylum.

D. The Denial of Withholding of Removal was Supported By Substantial Evidence

The considerations for withholding of removal are like those for asylum, though the "standard for withholding of deportation is more stringent than that for asylum eligibility." *Chen v. U.S. I.N.S.*, 195 F.3d 198, 205 (4th Cir. 1999). To claim asylum, an applicant must show either past persecution or a well-founded fear of future persecution. 8 U.S.C. §§ 1101(a)(42)(A), 1158 (b)(1)(A). "To qualify for withholding of deportation, an applicant must demonstrate a 'clear probability of persecution.'" *Chen*, 195 F.3d at 205 (quoting *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 430 (1987)). Unlike the standard for asylum, this standard "has no subjective component, but instead requires the alien to establish by objective evidence that it is more likely than not that he or she will be subject to persecution

upon deportation." *Cardoza-Fonseca*, 480 U.S. at 430. So while an Immigration Judge could grant an asylum claim but deny withholding of removal, denying an asylum claims means withholding of removal must also be denied. *Djadjou*, 662 F.3d at 272. Since the Immigration Judge rightfully denied asylum here, he also rightfully denied withholding of removal.

E. The Denial of CAT Protection Was Supported By Substantial Evidence

We next turn to his claim for protection under the CAT. The applicant must show "that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). Torture is "an extreme form of cruel and inhuman treatment that does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture." 8 C.F.R. § 1208.18(a)(2). "Because there is no subjective component for granting relief under the CAT, the Immigration Judge must consider any independent evidence that the applicant would be tortured, even if the Immigration Judge rejects the applicant's own testimony as not credible." *Anim v. Mukasey*, 535 F.3d 243, 253 (4th Cir. 2008) (cleaned up). But if the applicant can reasonably avoid torture by relocating within the country, he is not eligible for CAT relief. And "[i]n the CAT context, applicants bear the burden of presenting evidence to show that relocation within the country of removal is not possible." *Suarez-Valenzuela v. Holder*, 714 F.3d 241, 249 (4th Cir. 2013).

The Immigration Judge found that even if Herrera-Alcala's claims of past mistreatment were true, they do not constitute torture,[17] and that even if they did constitute torture, there was not a greater than 50% likelihood Herrera-Alcala would face such mistreatment again if removed. A.R. 162–63. We hold that these conclusions are supported by substantial evidence in the record. *See, e.g.*, *Turkson v. Holder*, 667 F.3d 523, 529 (4th Cir. 2012). So we must also affirm these findings, and the legal conclusion that flows from them. *Ibarra Chevez v. Garland*, 31 F.4th 279, 292–94 (4th Cir. 2022).

As the Immigration Judge noted, Herrera-Alcala presented no direct evidence that he would be tortured upon his return, and his testimony that he will be tortured upon his return is speculative. *See Ibarra Chevez*, 31 F.4th at 293. Herrera-Alcala's visa showed the government generally let him travel freely, but a State Department country conditions report noted the Cuban government restricts travel by targeted dissidents. This is evidence

[17] We ultimately conclude that substantial evidence supported the Immigration Judge's determinations that Herrera-Alcala's claims of torture were insufficient and that torture was unlikely to occur in the future. Other cases suggest that Herrera-Alcala's alleged mistreatment is on the edge of what qualifies as persecution in the context of asylum claims, which casts doubt on his claim it qualifies as torture. *See, e.g.*, *Li*, 405 F.3d at 177 ("[T]hree-day detention which included interrogations, beatings, and deprivation of food and water did not compel a conclusion of past persecution." (citing *Dandan v. Ashcroft*, 339 F.3d 567, 573 (7th Cir. 2003)); *id.* at 177–78 (noting it "was likely" that "being beaten resulting in the loss of two teeth, deprived of food and water, detained in a cell with no room to sit, and chained to a radiator—were sufficiently serious to rise beyond the level of mere harassment" and to constitute persecution (cleaned up) (quoting *Asani v. I.N.S.,* 154 F.3d 719, 725 (7th Cir.1998))). The likelihood Herrera-Alcala's experience rose to torture is undermined given that he claimed torture in the form of a beating but did not require medical care. *See Ntamack v. Holder*, 372 F. App'x 407, 413 (4th Cir. 2010) (finding no torture when respondent "was interrogated under difficult conditions, beaten (once to unconsciousness), and otherwise mistreated while in prison, but his testimony also indicates that . . . he never sought extensive medical attention as a result of his treatment").

the Cuban government does not treat him like a political dissident—and thus undermines his claim of likelihood of torture.

So the only question is whether the Immigration Judge's references to his earlier findings were clear enough. Although an agency decision may "leave much to be desired," we must uphold it if "the path which it followed can be discerned." *Colo. Interstate Gas Co. v. Fed. Power Comm'n*, 324 U.S. 581, 595 (1945). And here it can reasonably be discerned that his CAT analysis builds on the persecution analysis that immediately precedes it. And since the Immigration Judge's opinion was sound, the BIA did not abuse its discretion by affirming it. So we uphold the decision.

* * *

The venue statute focuses on where the Immigration Judge completes the proceeding, and here, the Immigration Judge was in the Fourth Circuit when he completed the proceedings. So venue was proper here. On the merits, the Immigration Judge evaluated Herrera-Alcala's testimony and other evidence and found them to be non-credible based on substantial evidence. So he rightly denied Herrera-Alcala's requests for relief. The petition is therefore

DENIED.