

1 UNITED STATES COURT OF APPEALS  
2  
3 FOR THE SECOND CIRCUIT  
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6  
7 August Term, 2005  
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9 (Argued: March 7, 2006

Decided: April 6, 2006)

10  
11 Docket No. 03-4807  
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13  
14 VICTOR PAUL,  
15

16 *Petitioner,*  
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18  
19 – v. –

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21 ALBERTO GONZALES,\*  
22 Attorney General of the United States,  
23

24 *Respondent.*  
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28 Before: CARDAMONE, CALABRESI, and HALL, *Circuit Judges.*  
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33 Petitioner, a native and citizen of Pakistan, seeks review of a decision by the Board of Immigration  
34 Appeals (“BIA”) denying his motion to reopen an application for asylum and withholding of removal  
35 on the basis of changed circumstances. The BIA denied the motion because the proffered evidence  
36 did not bear on the immigration judge’s adverse credibility determination. The immigration judge  
37 had concluded that petitioner had testified credibly that he was a practicing Christian, but had not  
38 testified credibly about alleged episodes of past religious persecution. Because petitioner was  
39 believed to be a Christian, proof of changed circumstances could have supported a renewed claim

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\* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as the respondent in this case.

1 of asylum or withholding of removal based on petitioner’s well-founded fear of future persecution,  
2 even though petitioner’s assertion of past persecution had been found not to be credible. Under the  
3 circumstances, the BIA’s failure to consider at all the evidence of changed conditions was error.  
4 Vacated and remanded.

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8 AMY GELL *of* Gell & Gell (Parker Waggaman,  
9 *on the brief*), New York, N.Y., *for Petitioner*.

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11 JAMIE M. BENNETT, Assistant United States Attorney *for*  
12 Rod J. Rosenstein, United States Attorney for the  
13 District of Maryland, Baltimore, Md., *for Respondent*.

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17 CALABRESI, *Circuit Judge*:

18 Petitioner Victor Paul (hereinafter “petitioner” or “Paul”), a native and citizen of Pakistan,  
19 seeks review of the Board of Immigration Appeals’ (“BIA”) denial of his motion to reopen his case  
20 to consider changed conditions in his native country. The BIA declined to reopen asylum  
21 proceedings because evidence of intensifying persecution of Christians in Pakistan did not bear on  
22 the immigration judge’s (“IJ”) original adverse credibility decision, and it was on the basis of that  
23 credibility ruling that Paul was denied asylum and withholding of removal in the first place. But the  
24 adverse credibility determination in this case was not a typical one. The IJ only found petitioner’s  
25 stories of past persecution incredible, and, in contrast, explicitly credited petitioner’s testimony that  
26 he was a practicing Christian. Consequently, petitioner could, independently of his defeated  
27 assertions of past persecution, have successfully made out a claim of a likelihood of *future*  
28 persecution by proving that, as a Christian, he would face religious persecution if returned to  
29 Pakistan. Because a petition for asylum and withholding of removal on the basis of such a risk of  
30 *future* persecution was potentially meritorious, the BIA abused its discretion in failing even to

1 consider evidence of deteriorating conditions for Christians in Pakistan. Accordingly, we grant  
2 Paul's petition for review, and we vacate and remand the case to the BIA for reconsideration.

### 4 BACKGROUND

5 Born in Gujarat, Pakistan in June 1945, petitioner entered the United States in September  
6 1994, and in August 1995, filed an asylum application, claiming religious persecution. In his  
7 written application, petitioner stated that he had faced aggression, harassment, and discrimination  
8 as a practicing Christian in Pakistan. In addition to the routine and widespread abuses supposedly  
9 faced by Christians throughout Pakistan, petitioner also described several instances in which Paul  
10 and his family were specifically targeted. In particular, petitioner claimed that he had been thrown  
11 out of a restaurant on account of his religion, and that, on one occasion, as he and his family left  
12 church, "fundamentalist" Muslims had hurled stones at his family, injuring his daughter's arm.

13 During a full hearing in April 1997, petitioner elaborated on the contentions he made in his  
14 written application. He testified that, shortly after he began working for the maintenance staff at the  
15 United States embassy in 1970, he was instructed to leave a restaurant because he was not Muslim.  
16 He also reiterated that, in May 1990, "fundamentalist" Muslims threw stones at him and his family  
17 as they exited their church, and that, as Paul's family fled, his daughter was struck on the upper arm  
18 by one of the stones. Petitioner stated that he decided not to report the event to the police because  
19 local law enforcement routinely turned a blind eye to the filing of such complaints. Finally,  
20 petitioner testified that, in April 1994, as he left church, two individuals approached him and asked  
21 him who Christ was. When he replied, "Jesus Christ is the son of God," the aggressors told Paul that  
22 he had insulted the Koran. They subsequently demanded that Paul come with them, and, when

1 petitioner resisted, they dragged and beat him until a crowd (which was apparently oblivious to the  
2 underlying conflict) forced the assailants to disperse. Afterwards, petitioner went into hiding, and  
3 a few months later left Pakistan for the United States.

4         Significantly, during his asylum hearing, petitioner discussed his religious beliefs and  
5 practices at some length. He relayed that he was born and raised a Christian, that he brought up his  
6 four children in the Christian faith, and that he was a member of two churches in Pakistan — the  
7 Sialkot Diocese of the Church of Pakistan (in which he was a parishioner while he lived in Gujarat,  
8 Pakistan), and Christ Church, which he joined once he moved to Rawalpindi, Pakistan in 1970. In  
9 addition, Paul recounted that, as a child, he participated in a prayer group (called Dwaya), and that,  
10 as an adult, he attended multi-day religious conventions. He also chronicled political developments  
11 in Pakistan that allegedly exacerbated discrimination against Christians, *i.e.*, the nationalization of  
12 colleges and hospitals, and the enactment of Sharia law in 1986. Moreover, in response to a series  
13 of questions from his lawyer and the IJ, petitioner gave fairly detailed descriptions of various  
14 Christian traditions and beliefs, *e.g.*, baptism, the Last Supper, Holy Communion, etc.<sup>1</sup>

15         On cross-examination, petitioner was confronted with an affidavit he had submitted to  
16 support his asylum petition. The statement was seemingly drafted by Alim Raza, who, according  
17 to the affidavit, was one of Paul’s best friends. Later, petitioner testified that Raza was actually his  
18 brother-in-law. The affidavit corroborated petitioner’s testimony that he had been thrown out of a  
19 restaurant because of his religion, and that his family had been pelted with stones as they left their  
20 church. The statement also indicated that Paul had been charged with blasphemy in Pakistan. When

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<sup>1</sup> *Cf. Rizal v. Gonzales*, \_\_ F.3d \_\_, 2006 WL 760242, at \*4 (2d Cir. March 21, 2006) (expressly rejecting the view that “a certain level of doctrinal knowledge is necessary in order to be eligible for asylum on grounds of religious persecution”).

1 questioned about the contents of the affidavit, however, petitioner flatly denied that he had ever been  
2 charged with blasphemy. Asked to reconcile this manifest discrepancy, petitioner explained that,  
3 after a paralegal working in his lawyer's office had encouraged him to secure a statement  
4 corroborating his assertions, petitioner had asked his wife (who was still in Pakistan) to obtain an  
5 affidavit attesting to what he had endured. Paul also claimed that he was unaware of what the  
6 statement said since no one had translated the affidavit or reviewed its contents with him. Petitioner  
7 subsequently suggested that the aforementioned paralegal had prepared the affidavit himself.

8 Shortly thereafter, the hearing was adjourned. A month or so later, on May 19, 1997, the IJ  
9 issued his decision, denying petitioner's claims on adverse credibility grounds.

10 The IJ expressed concern that Paul's original application did not include dates either of  
11 Paul's restaurant incident or of his family's violent encounter as they left church. Those dates, the  
12 IJ observed, were supplied only during later testimony and in a subsequently-submitted affidavit.  
13 The IJ also stressed that "an exhibit which [petitioner] essentially admits . . . was a falsified  
14 affidavit," provided the sole corroboration for Paul's claim. Unwilling both to accept those portions  
15 of the affidavit that supported Paul's stories of past persecution, and at the same time to disregard  
16 the part that petitioner had disavowed, the IJ entered an adverse credibility finding against Paul. The  
17 IJ also stated, however, that he was "mindful of the fact that [petitioner had] provided detailed  
18 testimony as to his Christian affiliation and [had] provided letters, as well as sufficient detail to lead  
19 this Court to believe that [petitioner], at minimum, has some Christian affiliation." On the basis of  
20 this mixed credibility ruling, the IJ ultimately denied asylum and withholding of removal, but  
21 granted the privilege of voluntary departure.

1 On May 8, 2002, the BIA affirmed the IJ's decision for substantially the reasons given by the  
2 IJ. Petitioner did not appeal this decision. Instead, on July 17, 2002, petitioner filed a motion to  
3 reopen the proceedings based on updated country reports that purportedly detailed increasingly harsh  
4 conditions for Christians in Pakistan.<sup>2</sup> The BIA denied this motion on March 26, 2003, on the  
5 ground that the proffered evidence was not relevant to the IJ's original adverse credibility  
6 determination against petitioner:

7 Our May 8, 2002 decision specifically affirmed the Immigration Judge's determination that  
8 [petitioner] failed to present a credible asylum claim. However, [petitioner's] motion to  
9 reopen does not address the Board's decision regarding the credibility of his testimony. The  
10 [petitioner] only raises arguments regarding the increased level of violence directed toward  
11 Christians in Pakistan and suggests that mannerisms acquired by [petitioner] in this country  
12 will somehow make him a target of anti-American sentiment when he returns to Pakistan.  
13 In light of [petitioner's] failure to present any new evidence relating specifically to the  
14 adverse credibility finding upon which the denial of his applications was based, the motion  
15 to reopen must be denied.

16  
17 Paul subsequently filed a timely petition for review, challenging the BIA's denial of his motion to  
18 reopen his case. It is to the merits of this petition that we now turn.

## 19 20 DISCUSSION

21 We review the BIA's denial of a motion to reopen for abuse of discretion. *See Kaur v. BIA*,  
22 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); *Khouzam v. Ashcroft*, 361 F.3d 161, 165 (2d Cir.  
23 2004). "An abuse of discretion may be found in those circumstances where the Board's decision  
24 provides no rational explanation, inexplicably departs from established policies, is devoid of any  
25 reasoning, or contains only summary or conclusory statements; that is to say, where the Board has

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<sup>2</sup> Petitioner's motion to reopen did not, everyone agrees, present any evidence that would have been relevant to the IJ's finding that Paul had submitted a seemingly falsified affidavit in support of his petition for asylum.

1 acted in an arbitrary or capricious manner.” *Ke Zhen Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 93  
2 (2d Cir. 2001) (internal citations omitted).

3 In the context of a motion to reopen, we are “precluded from passing on the merits of the  
4 underlying exclusion proceedings.” *Id.* at 90. Instead, we “confine our review to the denial of  
5 petitioner’s motion to reopen [the] proceedings.” *Kaur*, 413 F.3d at 233. Thus, in circumstances,  
6 such as those before us, where an asylum applicant does not file a timely appeal disputing the BIA’s  
7 affirmance of the IJ’s credibility ruling, a motion to reopen does not provide a collateral route by  
8 which the alien may challenge the validity of the original credibility determination. *See Ke Zhen*  
9 *Zhao*, 265 F.3d at 89-90; *see also Boudaguian v. Ashcroft*, 376 F.3d 825, 827 (8th Cir. 2004)  
10 (concluding that a federal appeals court “lack[ed] jurisdiction to review the BIA’s initial order  
11 because the [applicants] did not file a timely petition for review of that order,” and that its  
12 jurisdiction was “limited to review of the BIA order denying the [applicants’] motion to reconsider  
13 its initial decision or to reopen the asylum proceedings”).

14 \* \* \* \* \*

15 In appealing the denial of his motion to reopen, petitioner primarily challenges the BIA’s  
16 refusal to consider evidence of changed conditions in Pakistan.<sup>3</sup> The BIA’s decision was seemingly  
17 premised on the view that, because the IJ’s original adverse credibility ruling was not appealed and  
18 therefore could not be disturbed — and because, even assuming *arguendo* that the credibility finding  
19 could be reviewed, the proffered evidence gave the BIA no reason to do so — Paul could no longer  
20 successfully petition for asylum or withholding of removal. As to claims for which proof of past

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<sup>3</sup> Some parts of petitioner’s brief to us call into question the validity of the IJ’s credibility ruling. To the extent that petitioner’s arguments on appeal seek to challenge the original adverse credibility finding, we conclude — for the reasons stated earlier — that those contentions, whatever their merit, are not properly before us.

1 persecution was essential, petitioner admits that the BIA's position was correct given that the IJ  
2 explicitly rejected as not credible his narratives of past persecution. Petitioner contends, however,  
3 that, because the IJ expressly accepted that he was a practicing Christian,<sup>4</sup> he could, in his motion  
4 to reopen, validly raise claims based on his undisputed status as a Christian so long as these claims  
5 did not depend on evidence of past persecution. In particular, Paul argues that he could have sought  
6 asylum and withholding of removal on the basis of a likelihood of future persecution, even though  
7 his claim of past persecution was previously rejected and, under the circumstances, cannot be  
8 revived.

9 For us to decide whether the BIA abused its discretion in completely ignoring potentially  
10 significant evidence, we therefore must consider whether an inviolate adverse credibility  
11 determination with respect to some of an alien's claims, *i.e.*, Paul's claims of past persecution,  
12 necessarily infects related but essentially freestanding claims made by the same applicant in the  
13 course of the same petition, *i.e.*, Paul's claims of a well-founded fear of future persecution. The prior  
14 holdings of our circuit suggest, and we now expressly hold, that, with respect to petitions for both  
15 asylum and withholding of removal, an applicant may prevail on a theory of future persecution  
16 despite an IJ's adverse credibility ruling as to past persecution, *so long as the factual predicate of*  
17 *the applicant's claim of future persecution is independent of the testimony that the IJ found not to*  
18 *be credible.*

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<sup>4</sup> In his brief and at oral argument, petitioner rightly observed that the IJ made a "bifurcated finding" as to petitioner's credibility. The respondent's lawyer, in the course of ably and responsibly advocating the government's position, did not dispute petitioner's view. Thus, the government acknowledged, as it must, that the record before us clearly indicates that, while the IJ rejected Paul's allegations of past persecution, he accepted Paul's testimony that he was a practicing Christian.



1           *Asylum* — For the purpose of deciding asylum petitions under the Immigration and  
2       Nationality Act (“INA”), 8 U.S.C. §§ 1101 *et seq.*, we have stated that:

3           An applicant may qualify for refugee status in two ways. First, he may demonstrate that he  
4           has suffered past persecution, in which case a presumption arises that he has a well-founded  
5           fear of future persecution. Second, the applicant may establish that he has a well-founded  
6           fear of future persecution, which requires that the alien present credible testimony that he  
7           subjectively fears persecution and establish that his fear is objectively reasonable.

8  
9       *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004) (internal citations omitted). It follows  
10      that, under settled circuit law, an asylum claim based solely on evidence of a well-founded fear of  
11      *future* persecution is not necessarily foreclosed by an IJ’s finding that an applicant’s anecdotes of  
12      *past* persecution are not believable. In the instant case, because the IJ credited Paul’s testimony that  
13      he was, in fact, a practicing Christian, a claim based on Paul’s fear that he will be persecuted *in the*  
14      *future* because of his religious beliefs remained viable.<sup>5</sup> See *Islami v. Gonzales*, 412 F.3d 391, 394  
15      n.3 (2d Cir. 2005) (“[W]e note that a showing of past persecution . . . need not be a necessary  
16      condition for asylum eligibility to be established. An applicant who demonstrates a well-founded  
17      fear of future persecution is not required to show that he or she suffered past persecution as well.”  
18      (citing *Guan Shan Liao v. U.S. Dep’t of Justice*, 293 F.3d 61, 67 (2d Cir. 2002))). And since a  
19      petition for asylum — based on Paul’s fear of future religious persecution — could have succeeded  
20      regardless of the IJ’s view of petitioner’s stories of past persecution, evidence of how Christians are

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<sup>5</sup> Although the IJ’s bifurcated credibility ruling does not foreclose a claim of future persecution, it does affect how Paul may go about proving the subjective and objective validity of his fear. For instance, petitioner cannot assert that he subjectively fears persecution on the basis of what his family purportedly endured in the past. But, Paul can still validly claim that he subjectively fears persecution because he is a Christian. For that aspect of petitioner’s testimony was expressly found believable by the IJ, and the BIA’s decision did nothing to alter that conclusion. As to the objective reasonableness of Paul’s fear, due to the IJ’s credibility ruling, Paul’s claim of future persecution does not benefit from the presumption in his favor that would have been established had past persecution been proven. But, proof of worsening country conditions in Pakistan can still furnish evidence that Paul’s fear of future persecution is objectively reasonable.

1 currently being treated in Pakistan should have been considered. Because the BIA “inexplicably  
2 depart[ed] from established policies,” *Ke Zhen Zhao*, 265 F.3d at 93, we conclude that the BIA  
3 abused its discretion in denying the motion to reopen without at least considering the country report  
4 submitted by petitioner.

5 *Withholding of Removal* — Paul’s original application, which he sought to reopen, also  
6 contained a petition for withholding of removal under 8 U.S.C. § 1231. Since withholding of  
7 removal, unlike asylum, may only be requested on the basis of a probability of future persecution,  
8 determining whether a withholding claim remained viable despite the IJ’s credibility ruling requires  
9 a somewhat different analysis from the one just made.

10 It is well-settled that the burden of proof for a withholding of removal claim is higher than  
11 the burden of proof for an asylum claim. *See Abankwah v. INS*, 185 F.3d 18, 21-22 (2d Cir. 1999).  
12 Hence, it might be thought that a valid adverse credibility decision as to a significant portion of an  
13 applicant’s asylum claim, *i.e.*, his allegations of past persecution, would inexorably foreclose a  
14 petition for withholding of removal. We have previously presented this very position — in dicta<sup>6</sup>  
15 — in *Ramsameachire*, where we stated that “an applicant who cannot establish his eligibility for  
16 asylum is necessarily unable to establish his eligibility for withholding of removal.”  
17 *Ramsameachire*, 357 F.3d at 183 (quoting *Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003)  
18 (per curiam)) (internal quotations marks omitted).

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<sup>6</sup> The asylum seeker in *Ramsameachire* did not challenge the BIA’s rejection of his withholding claim. *See Ramsameachire*, 357 F.3d at 183. That claim, therefore, had been waived, *see Yueqing Zhang v. Gonzales*, 426 F.3d 540, 541 n.1 (2d Cir. 2005), and, as a result, our musing on whether a withholding claim was necessarily barred by the rejection of an asylum claim on adverse credibility grounds was dicta.

1 But, in *Ramsameachire* itself, with respect to claims under the United Nations Convention  
2 Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), Dec.  
3 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 — which are also subject to a higher  
4 standard of proof than asylum claims, *i.e.*, that the “alien is more likely than not to be tortured in the  
5 country of removal,” 8 C.F.R. § 208.16(c)(4) — we firmly held that an IJ may not deny a CAT claim  
6 solely on the basis of an adverse credibility finding. *See Ramsameachire*, 357 F.3d at 184-85.<sup>7</sup> In  
7 support of this conclusion, we reasoned that claims for CAT relief “focus[] solely on the likelihood  
8 that the alien will be tortured if returned to his or her home country, regardless of the alien’s  
9 subjective fears of persecution or his or her past experiences. Unlike an asylum claim, the CAT  
10 claim lacks a subjective element, focuses broadly on torture without regard for the reasons for that  
11 treatment, and requires a showing with respect to future, rather than past, treatment.” *Id.* at 185. As  
12 a consequence, “an alien’s CAT claim may be established using different evidence and theories than  
13 the alien’s claims under the INA,” and “an adverse credibility determination made in the asylum  
14 context should not necessarily affect the BIA’s consideration of the alien’s CAT claim.” *Id.*

15 Withholding claims, like CAT claims, lack a subjective component and are concerned only  
16 with objective evidence of future persecution. The INA’s withholding provision, 8 U.S.C. §  
17 1231(b)(3)(A), states that “the Attorney General may not remove an alien to a country if the Attorney  
18 General decides that the alien’s life or freedom would be threatened in that country because of the  
19 alien’s race, religion, nationality, membership in a particular social group, or political opinion.” In  
20 *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), the Supreme Court held that the “‘would be  
21 threatened’ language of [this provision] has no subjective component,” and, hence, the alien must

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<sup>7</sup> This holding was limited to those situations in which the adverse credibility finding did not negate all of the factual bases of the applicant’s claim of a likelihood of future persecution. *See infra*.

1 “establish by objective evidence that it is more likely than not that he or she will be subject to  
2 persecution upon deportation.” *Cardoza-Fonseca*, 480 U.S. at 430.

3 Because withholding claims, just like petitions for CAT relief, depend on objective evidence  
4 of future persecution, the rationale we enunciated in *Ramsameachire* in holding that adverse  
5 credibility rulings as to asylum do not necessarily bar relief under the CAT must similarly apply in  
6 the withholding context. Accordingly, we now conclude that a withholding of removal claim under  
7 8 U.S.C. § 1231, premised exclusively on objective evidence of future persecution, may, in  
8 appropriate instances, be sustained even though an IJ, in the context of an asylum claim, has found  
9 not credible the applicant’s testimony alleging past persecution.

10 This does not mean, of course, that where a withholding claim is based on the very fact, or  
11 set of facts, that the IJ found not to be credible, that an adverse credibility ruling will not preclude  
12 the withholding claim. Indeed, in such circumstances, we have routinely decided in any number of  
13 cases before and after *Ramsameachire* that a withholding of removal claim was meritless since the  
14 alien’s asylum claim had failed on adverse credibility grounds. *See e.g., Majidi v. Gonzales*, 430  
15 F.3d 77, 81-82 (2d Cir. 2005); *Zhou Yi Ni v. U.S. Dep’t of Justice*, 424 F.3d 172, 174-75 (2d Cir.  
16 2005) (per curiam); *Xu Duan Dong v. Ashcroft*, 406 F.3d 110, 112 (2d Cir. 2005) (per curiam); *Zhou*  
17 *Yun Zhang v. INS*, 386 F.3d 66, 71 (2d Cir. 2004); *Xusheng Shi v. BIA*, 374 F.3d 64, 65 (2d Cir.  
18 2004) (per curiam); *Wu Biao Chen*, 344 F.3d at 275; *Gomez v. INS*, 947 F.2d 660, 665 (2d Cir.  
19 1991).

20 In all these cases, the factual predicate of the alien’s withholding claim was based on the  
21 same assertions that the IJ had found incredible in denying the applicant’s asylum claim. For  
22 example, in *Wu Biao Chen* (which was decided before *Ramsameachire*), the only evidence of a

1 future threat to life or freedom was petitioner’s contention, which the IJ found not to be believable,  
2 that he had held certain political views and had participated in political activities in his native  
3 country. *See Wu Biao Chen*, 344 F.3d at 274. Because that same factual assertion was needed for  
4 either the asylum or the withholding claim, the credibility ruling necessarily foreclosed relief in both.  
5 *See also Gomez*, 947 F.2d at 663 (insufficient evidence that the applicant’s purported persecutors  
6 were inclined to harm her, which formed the sole basis of the alien’s asylum and withholding  
7 claims).

8 And, in *Zhou Yi Ni* (which was decided after *Ramsameachire*), the only basis for the  
9 applicant’s asylum and withholding claims was a sterilization that government officials had allegedly  
10 forced the applicant’s wife to undergo. Because the IJ found the applicant’s testimony incredible  
11 as to the sterilization, *see Zhou Yi Ni*, 424 F.3d at 174, both asylum and withholding of removal were  
12 necessarily rendered meritless by the credibility determination. *See also Majidi*, 430 F.3d at 80 (sole  
13 basis for asylum and withholding was petitioner’s testimony that he was harassed and persecuted for  
14 his political views, which the IJ validly found to be incredible); *Zhou Yun Zhang*, 386 F.3d at 70  
15 (assertion that wife was forcibly sterilized, which the IJ correctly found incredible, was the only basis  
16 for alien’s petition for asylum and withholding of removal); *Xusheng Shi*, 374 F.3d at 66 (same as  
17 *Zhou Yun Zhang*).

18 Similarly, in the analogous context of CAT claims, we have held that a petition for CAT  
19 relief may fail because of an adverse credibility ruling rendered in the asylum context where the  
20 factual basis for the alien’s CAT claim was the same as that rejected in his asylum petition. For  
21 instance, in *Xue Hong Yang v. U.S. Dep’t of Justice*, 426 F.3d 520 (2d Cir. 2005), an IJ had “validly  
22 found, on the basis of inconsistent and implausible statements by Yang and her husband, that Yang

1 had failed to establish a particular fact — Yang’s forced sterilization — and that fact formed the only  
2 potentially valid basis for Yang’s CAT claim.” *Xue Hong Yang*, 426 F.3d at 523. We therefore  
3 concluded in *Xue Hong Yang* that the BIA had not erred in denying CAT relief on the basis of the  
4 IJ’s credibility ruling with respect to the applicant’s asylum claim. In so doing, we distinguished our  
5 decision in *Ramsameachire* on the ground that the applicant in that case had a “completely separate  
6 factual basis” for his CAT claim. *Id.*

7 Unlike all those decisions — *i.e.*, the pre- and post- *Ramsameachire* withholding cases and  
8 the more recent CAT claim case, *Xue Hong Yang* — the withholding claim that petitioner seeks to  
9 reopen in this case does not rest on, or in any way require, the validity of his defeated allegations of  
10 past persecution. For Paul’s petition for withholding of removal to succeed, he needs (1) to establish  
11 that he possessed the relevant characteristic, *i.e.*, that he was, in fact, a practicing Christian, and (2)  
12 to present sufficient objective evidence that, if returned to Pakistan, he would likely be persecuted  
13 on the basis of his religious beliefs. The government has conceded that Paul was found to have  
14 credibly testified that he was a practicing Christian. In order to prevail, he therefore only needs to  
15 demonstrate, through the proffer of enough valid evidence, that he would likely be persecuted  
16 because of his religion. Proof that persecution of Christians in Pakistan has become more common,  
17 intense, or far-reaching — *i.e.*, the very proof that petitioner purports to have presented in filing his  
18 motion to reopen — would clearly bear on this objective inquiry. Under the circumstances, the  
19 BIA’s refusal even to consider such evidence constitutes an abuse of discretion. *See* 8 C.F.R. §  
20 1003.2(c)(3)(ii); *see also Poradisova v. Gonzales*, 420 F.3d 70, 78, 81 (2d Cir. 2005) (“When an  
21 applicant moves to reopen his case based on worsened country conditions, and introduces previously  
22 unavailable reports that materially support his original application, the BIA has a duty to consider

1     these reports and issue a reasoned decision based thereon, whether or not these reports are clearly  
2     determinative.” (emphasis omitted)).

3             For the foregoing reasons, we grant Paul’s petition for review, we VACATE the BIA’s denial  
4     of petitioner’s motion to reopen, and we REMAND the case for further proceedings consistent with  
5     this opinion.