

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

1           At a stated term of the United States Court of Appeals  
2           for the Second Circuit, held at the Daniel Patrick Moynihan  
3           United States Courthouse, 500 Pearl Street, in the City of  
4           New York, on the 27th day of February, two thousand seven.

5  
6           PRESENT:

7                   HON. ROBERT D. SACK,  
8                   HON. SONIA SOTOMAYOR,  
9                   HON. ROBERT A. KATZMANN,  
10                                   Circuit Judges.

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13           CHUAN XIANG JIANG,  
14                   Petitioner,

15  
16                   v.

03-40297-ag  
NAC

17  
18           BOARD OF IMMIGRATION APPEALS,  
19                   Respondent.

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21  
22           FOR PETITIONER:           Gary J. Yerman, New York, New York.

23  
24           FOR RESPONDENT:           Kenneth L. Wainstein, United States  
25                                   Attorney for the District of  
26                                   Columbia, Madelyn E. Johnson, Keith  
27                                   V. Morgan, Assistant United States

1 **Attorneys, Washington, D.C.**

2 UPON DUE CONSIDERATION of this petition for review of a  
3 decision of the Board of Immigration Appeals ("BIA"), it is  
4 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for  
5 review is DENIED, in part, DISMISSED, in part, and GRANTED,  
6 in part, the BIA's order is VACATED, in part, and the case  
7 is REMANDED for further proceedings.

8 Petitioner Chuan Xiang Jiang, a citizen of the People's  
9 Republic of China, seeks review of a July 18, 2003 order of  
10 the BIA affirming the December 12, 2001 decision of  
11 Immigration Judge ("IJ") Paul A. DeFonzo denying his  
12 applications for asylum, withholding of removal, and relief  
13 under the Convention Against Torture ("CAT"). *In re Chuan*  
14 *Xiang Jiang*, No. A76 506 616 (B.I.A. July 18, 2003), *aff'g*  
15 No. A76 506 616 (Immig. Ct. N.Y. City Dec. 12, 2001). We  
16 assume the parties' familiarity with the underlying facts  
17 and procedural history of the case.

18 Where, as here, the BIA summarily affirms the decision  
19 of the IJ without issuing an opinion, see 8 C.F.R. §  
20 1003.1(e)(4), we review the IJ's decision as the final  
21 agency determination. See, e.g., *Twum v. INS*, 411 F.3d 54,  
22 58 (2d Cir. 2005). We review the agency's factual findings,

1 including adverse credibility determinations, under the  
2 substantial evidence standard. 8 U.S.C. § 1252(b)(4)(B);  
3 see, e.g., *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d  
4 Cir. 2004). However, we retain authority to remand when the  
5 agency has failed to apply the law correctly or if its  
6 findings are not supported by record evidence. *Ivanishvili*  
7 *v. U.S. Dep't of Justice*, 433 F.3d 332, 337 (2d Cir. 2006).

8 Substantial evidence supports the IJ's adverse  
9 credibility finding underlying the denial of asylum and  
10 withholding.<sup>1</sup> During his testimony, Jiang contradicted  
11 himself repeatedly with regard to matters material to his  
12 claim that his wife was forcibly sterilized. He was unable  
13 to provide a coherent, chronological account of when his  
14 wife was forced to wear an IUD, when she became pregnant a  
15 second time, when she was taken for sterilization, or where  
16 he and his wife were when she was taken. In addition, his  
17 testimony included several allegations that were not  
18 mentioned in his asylum application, and he was unable to

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<sup>1</sup> Although Jiang argues in his brief to this Court that he is eligible for CAT relief, it appears that he abandoned his CAT claim at the IJ level. As the IJ did not address a CAT claim in his decision, and Jiang did not make any arguments relevant to CAT relief in his brief to the BIA, we find that Jiang has failed to preserve the claim for judicial review. See *Li Zu Guan v. INS*, 453 F.3d 129, 132 n.2 (2d Cir 2006). Accordingly, we "deny review of [Jiang's] CAT claim without further discussion." *Id.*; see also *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 320 n.1 (2d Cir. 2006).

1 exhibit any familiarity with the documents he submitted.  
2 Notwithstanding his arguments that his confusing testimony  
3 should have been excused due to his poor memory and lack of  
4 education, a reasonable fact-finder would not be compelled  
5 to credit his explanations or conclude that he presented a  
6 credible claim of persecution. See *Jin Yu Lin v. U.S. Dep't*  
7 *of Justice*, 413 F.3d 188, 190-91 (2d Cir. 2005); *Zhou Yun*  
8 *Zhang*, 386 F.3d at 77.

9       However, it is not clear that the same considerations  
10 warrant a finding that Jiang knowingly filed a frivolous  
11 application, when the IJ did not provide any additional  
12 reasoning to support that finding. See *Yuanliang Liu v.*  
13 *U.S. Dep't of Justice*, 455 F.3d 106, 114 (2d Cir. 2006). A  
14 finding of frivolousness has severe consequences: "If the  
15 Attorney General determines that an alien has knowingly made  
16 a frivolous application for asylum and the alien has  
17 received the [prescribed] notice . . . , the alien shall be  
18 permanently ineligible for any benefits under this Act . . .  
19 ." 8 U.S.C. § 1158(d)(6); see also *Yuanliang Liu*, 455 F.3d  
20 at 112, 117 ("A finding of frivolousness is a potential  
21 'death sentence' for an alien's immigration prospects."  
22 (emphasis deleted)).  
23

1 Because this case would benefit from the outcome of the  
2 remand in *Yuanliang Liu*, as the IJ relied only on his  
3 general finding that Jiang appeared unfamiliar with the  
4 details, a limited remand in this case is required, see *id.*  
5 at 117-18, for the BIA to clarify the standard it applies in  
6 determining whether this asylum application is frivolous,  
7 and determine whether the facts of Jiang's case meet that  
8 standard.

9 \_\_\_\_\_For the foregoing reasons, the petition for review is  
10 DENIED, in part, DISMISSED, in part, and GRANTED, in part,  
11 the BIA's order is VACATED, in part, and the case is  
12 REMANDED for further proceedings. The pending motion for a  
13 stay of removal in this petition is DISMISSED as moot.

14  
15 FOR THE COURT:  
16 Thomas Asreen, Acting Clerk

17  
18 By: \_\_\_\_\_