UNITED STATES COU	JRT OF APPEALS
FOR THE SECON	ND CIRCUIT
SUMMARY	ORDER
THIS SUMMARY ORDER WILL NOT BE PUB AND MAY NOT BE CITED AS PRECEDENTI OTHER COURT, BUT MAY BE CALLED TO OTHER COURT IN A SUBSEQUENT STAGE CASE, OR IN ANY CASE FOR PURPOSES JUDICATA.	AL AUTHORITY TO THIS OR ANY THE ATTENTION OF THIS OR ANY OF THIS CASE, IN A RELATED
At a stated term of the Unite the Second Circuit, held at the Da States Courthouse, 500 Pearl Stree the 18th day of October, two thous	t, in the City of New York, on
PRESENT:	
Hon. John M. Walker, Jr., Hon. Pierre N. Leval, Hon. Guido Calabresi, Circuit Judges	
QIN LIN, QUI JIAN JIANG,	x
<u>Petitioners</u> ,	
ν.	05-4882-ag
ALBERTO R. GONZALES,	
Respondent.	
	X
APPEARING FOR PETITIONER:	THOMAS V. MASSUCCI, New York, New York.
APPEARING FOR RESPONDENT:	STEPHEN E. EHLKE, Assistant United States Attorney (Stephen P. Sinnott, United States Attorney for the

Western District of Wisconsin, <u>on the brief</u>), Madison, Wisconsin.

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Petition for review from the Board of Immigration Appeals.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED that the petition for review is **DENIED**.

9 Petitioners Qin Lin and Qui Jian Jiang, who are respectively 10 wife and husband and natives and citizens of the People's 11 Republic of China, seek review of an August 15, 2005, Board of 12 Immigration Appeals ("BIA") order adopting and affirming the 13 January 15, 2004, decision of Immigration Judge ("IJ") Barbara A. 14 Nelson denying petitioners' applications for asylum and for 15 withholding of removal pursuant to 8 U.S.C. § 1231(b)(3) and the 16 Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT").* <u>In re Qin Lin & Qui</u> 17 <u>Jian Jiang</u> (B.I.A. Aug. 15, 2005), <u>aff'g</u> Nos. A 95 841 695 & 78 18 102 300 (Immig. Ct. N.Y. City Jan. 15, 2004). Petitioners (1) 19 20 challenge the IJ's finding that Qin Lin knowingly filed a 21 frivolous claim, see 8 U.S.C. § 1158(d)(6); 8 C.F.R. § 1208.20, 22 (2) contend that the removal hearing did not afford them due 23 process because the IJ failed to transcribe portions of Qin Lin's 24 testimony, and (3) dispute the IJ's timeliness and adverse 25 credibility findings and the IJ's demand for corroborative 26 evidence. We assume the parties' familiarity with the facts and 27 procedural history.

28 While the IJ's failure to transcribe portions of the removal 29 hearing is disturbing, see Kheireddine v. Gonzales, 427 F.3d 80, 30 84 & n.4 (1st Cir. 2005); Ortiz-Salas v. INS, 992 F.2d 105, 106 31 (7th Cir. 1993), petitioners did not raise their due process 32 argument before the BIA. Neither did petitioner Qin Lin raise 33 her objection to the frivolousness finding before the BIA. They 34 are therefore waived. 8 U.S.C. § 1252(d)(1); see Foster v. INS, 35 376 F.3d 75, 77-78 (2d Cir. 2004) (per curiam). Furthermore, the 36 portions of the testimony which were transcribed support the IJ's 37 findings and petitioners have not suggested that anything in the 38 un-transcribed portion would undermine them.

Petitioners did properly challenge the IJ's timeliness finding and her demand for corroborative evidence. However, we lack jurisdiction to review timeliness determinations. 8 U.S.C. \$ 1158(a)(3). And we cannot conclude that "a reasonable trier of

 ^{*} United Nations Convention Against Torture and Other Cruel,
 Inhuman or Degrading Treatment or Punishment, <u>opened for signature</u>
 Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85.

1 fact [would have been] compelled to conclude that . . . 2 corroborating evidence [wa]s unavailable," 8 U.S.C. § 3 1252(b)(4), and so do not disturb the IJ's demand for 4 corroborative evidence.

5 Finally, we review the IJ's adverse credibility finding for 6 substantial evidence. Xiao Ji Chen v. U.S. Dep't of Justice, 434 F.3d 144, 156 & n.9 (2d Cir. 2006). Even if "analytic errors" 7 8 exist, we need not remand to the agency if we can confidently 9 predict that the agency would reach the same result. Li Hua Lin 10 v. DOJ, 453 F.3d 99, 106-108 (2d Cir. 2006) (reviewing the circumstances in which remand would be futile). Here, remand 11 12 would be futile. The IJ based her adverse credibility finding 13 not only on several substantial inconsistencies in petitioner Qin Lin's testimony, but also on her observation of Qin Lin's 14 15 demeanor during the hearing, an observation with which a court of appeals is ill-suited to quibble. 16

For the foregoing reasons, the petition appealing the decision of the Board of Immigration Appeals is hereby DENIED.
FOR THE COURT:
Roseann B. MacKechnie, Clerk
By:
Lucille Carr, Deputy Clerk

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