

1 UNITED STATES COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT

3  
4 SUMMARY ORDER

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6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER  
7 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY  
8 OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY  
9 OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR  
10 IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.  
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12 At a stated term of the United States Court of Appeals for the Second Circuit, held at the  
13 Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 3rd  
14 day of May, Two thousand and six.

15  
16 PRESENT:

17  
18 HON. ROGER J. MINER,  
19 HON. JOSÉ A. CABRANES,  
20 HON. ROSEMARY S. POOLER,  
21 *Circuit Judges.*

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23 \_\_\_\_\_  
24 Zheng Xi Liu,

*Petitioners,*

25  
26 -v.-

No. 04-6346-ag  
NAC

27  
28 Board of Immigration Appeals,

*Respondent.*

29  
30 \_\_\_\_\_  
31  
32 FOR PETITIONER: John Z. Zhang, New York, New York.

33  
34 FOR RESPONDENT: Alice H. Martin, United States Attorney for the Northern District  
35 of Alabama (Jenny L. Smith, Assistant United States Attorney, on  
36 the brief), Birmingham, Alabama.

37  
38 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of  
39 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the  
40 petition for review is GRANTED, the decision of the BIA is VACATED, and the decision  
41 REMANDED for further proceedings consistent with this decision.

42 Zheng Xi Liu, a native and citizen of the People’s Republic of China, petitions for review

1 of the November 2004 BIA order affirming an immigration judge’s (“IJ”) decision denying his  
2 applications for asylum, withholding of removal, and relief under the Convention Against  
3 Torture (“CAT”). We assume the parties’ familiarity with the underlying facts and procedural  
4 history in these consolidated cases.

5 When the BIA adopts and supplements the IJ’s decision, this Court reviews the IJ’s  
6 decision as supplemented by the BIA. *See Yan Chen v. Gonzales*, 417 F.3d 268, 271–72 (2d  
7 Cir. 2005). This Court reviews the IJ’s factual findings, including adverse credibility  
8 determinations, under the substantial evidence standard. *See* 8 U.S.C. § 1252(b)(4)(B); *Jin Hui*  
9 *Gao v. United States Att’y Gen.*, 400 F.3d 963, 964 (2d Cir. 2005) (per curiam).

10 The adverse credibility finding in this case was not supported by substantial evidence.  
11 First, the record does not support the IJ’s finding that it was not clear how Liu knew that the  
12 village cadres had visited his home because his parents practiced Falun Gong or “whether there  
13 was a conversation between him and the officials” before he asked them “what was wrong with  
14 [his] parents practicing Falun Gong.” In his written application, Liu stated that he angrily asked  
15 the cadres “what had happened,” and the leader told him that “somebody reported that [his]  
16 parents continued practicing Falungong [sic] at home.” Moreover, while the IJ did not express  
17 any difficulties in hearing or understanding Liu’s testimony, the transcript reveals that Liu’s  
18 testimony was “indiscernible” during key moments throughout the hearing, including with  
19 respect to Liu’s confrontation with the village cadres. Because of this, we cannot adequately  
20 complete our review.

21 Second, the IJ’s finding that Liu “did not provide much detail” about the events that  
22 transpired in China is similarly problematic. The IJ identified only one example of this  
23 deficiency — that Liu provided “no details whatsoever” about how he escaped the cadres. The

1 transcript indicates that Liu testified “(indiscernible) then a friend of mine came over trying to  
2 block the (indiscernible) and I was able to run away.” However, even if Liu’s testimony here  
3 was “sparse,” thus leading the IJ to wonder whether it had been fabricated, the IJ and  
4 Government counsel could have “probe[d] for incidental details, seeking to draw out  
5 inconsistencies that would support a finding of lack of credibility.” *Jin Shui Qiu v. Ashcroft*, 329  
6 F.3d 140, 152 (2d Cir. 2003). Here, neither the IJ nor the Government questioned Liu further on  
7 this issue.

8 Third, the IJ erred in other respects. The IJ improperly faulted Liu for failing to provide  
9 medical evidence that he had been beaten, when Liu never stated that he had sought such medical  
10 attention. The IJ unreasonably faulted Liu for failing to provide an answer for why his summons  
11 did not mention the “assault” on the official when it was not logical to expect Liu to explain why  
12 a legal notice directing him to appear at a police station would omit certain information. The IJ  
13 also failed to discuss how the finding that Liu’s parents have remained in China without having  
14 been persecuted by the Chinese government impacted Liu’s credibility, inasmuch as the parents  
15 indicated that they avoided persecution only by continually relocating.

16 Further, while the IJ accurately observed that Liu did not mention the struggle with the  
17 village cadres in his airport statement, this omission, when measured against the entire record,  
18 *see Secaida-Rosales v. INS*, 331 F.3d 297, 308, (2d Cir. 2003), is not fatal because the crux of  
19 Liu’s claim is that his parents had been sought by the Chinese government due to their practice  
20 of Falun Gong; the Chinese authorities imputed the political opinion of Liu’s parents to him; and  
21 he resisted the authorities’ efforts to locate his parents.

22 Because Lin failed to raise the issue of CAT relief on appeal to the BIA, this Court lacks  
23 jurisdiction to review this claim. *See* 8 U.S.C. § 1252(d); *Theodoropoulos v. INS*, 358 F.3d 162

1 (2d Cir. 2004) (holding that where exhaustion is required, a court must dismiss any unexhausted  
2 claim for lack of jurisdiction).

3 For the foregoing reasons, the petition for review is GRANTED, the decision of the BIA  
4 is VACATED with respect to the asylum and withholding of removal claims, and the decision  
5 REMANDED for further proceedings consistent with this decision. Having completed our  
6 review, any stay of removal that the Court previously granted in this petition is VACATED, and  
7 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending  
8 request for oral argument in this petition is DENIED in accordance with Federal Rule of  
9 Appellate Procedure 34(a)(2) and Second Circuit Local Rule 34(d)(1).

10 FOR THE COURT:  
11 Roseann B. MacKechnie, Clerk  
12  
13 By: \_\_\_\_\_