

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 6th day of June, two thousand and six.

PRESENT:

HON. THOMAS J. MESKILL,
HON. CHESTER J. STRAUB,
HON. SONIA SOTOMAYOR,
Circuit Judges.

Shu Kui Li,

Petitioner,

v.

No. 05-3110-ag
NAC

Alberto R. Gonzales, United States Attorney General,
Respondent.

FOR PETITIONER: Michael Brown, New York, New York.

FOR RESPONDENT: R. Alexander Acosta, United States Attorney, Southern District of Florida, Anne R. Schultz, Chief, Appellate Division, Lisette M. Reid, Kathleen M. Sayer, Assistant United States Attorneys, Miami, Florida.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

Shu Kui Li petitions for review of the BIA's May 19, 2005 decision denying his motion to reopen and reconsider the BIA's February 4, 2005 affirmance of the decision of Immigration Judge ("IJ") Paul DeFonzo denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We assume the parties' familiarity with the underlying facts and procedural history of the case.

This Court reviews the BIA's denial of a motion to reopen or reconsider for abuse of discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); *Jin Ming Liu v. Gonzales*, 439 F.3d 109, 111 (2d Cir. 2006) (per curiam). The BIA did not abuse its discretion in denying Li's motion to reconsider. In support of the motion to reconsider, Li offered three new reasons for his failure to include in his initial written asylum application that he was slapped by police during a confrontation in 1999. Li did not make any new legal arguments or point to any facts that the IJ or BIA overlooked, but rather tried to rectify an omission for which he was faulted by the IJ and BIA. The motion to reconsider was not the appropriate forum to introduce new explanations for previous omissions. *See Matter of Guevara*, 20 I. & N. Dec 238 (BIA 1991).

In support of his motion to reopen, Li also claimed that he had married a woman who began practicing Falun Gong in the United States and that he had sent Falun Gong materials to his family in China. He stated that the Chinese authorities intercepted the package and have repeatedly visited his parents' house to advise his parents to urge him to return to China. The BIA found that Li's new evidence would not materially affect the outcome of his case, as it did not sufficiently rectify the original deficiencies that caused the IJ and BIA to find him not credible. This Court recently held that "with respect to petitions for both asylum and

withholding of removal, an applicant may prevail on a theory of future persecution despite an IJ's adverse credibility ruling as to past persecution, *so long as the factual predicate of the applicant's claim of future persecution is independent of the testimony that the IJ found not to be credible.*" *Paul v. Gonzales*, 444 F.3d 148, 154 (2d Cir. 2006) (emphasis in original). Here, the IJ found that Li was not credible as to his claim that he was a Falun Gong practitioner. The BIA affirmed the IJ's decision, holding that Li failed to establish that he was a victim of mistreatment in China on account of his practice of Falun Gong. The BIA did not abuse its discretion in finding that lack of detail and failure to corroborate the claim caused Li not to be credible. *See In re S-A-*, 21 I. & N. Dec. 1050 (BIA 1997) (denying motion to reopen based on insufficiently detailed affidavit). Because the new information dealt with the same subject matter with regard to which the IJ found Li not to be credible — *i.e.*, his practice of Falun Gong and the resulting consequences — and the BIA rationally determined that Li's new claim was not credible and lacking in detail, the BIA did not abuse its discretion in determining that the new information would not materially affect the agency's previous adverse credibility determination. Additionally, there is nothing in Li's submission indicating that his marriage to a woman who began practicing Falun Gong in the United States would subject him to future persecution in China.

_____For the foregoing reasons, the petition for review is DENIED.

FOR THE COURT:
Roseann B. MacKechnie, Clerk
By:_____