

**Third Circuit Court**

**Case:** *Lin v. Attorney General*, 543 F.3d 114 (3d Cir. 2008)

**Date:** Sept. 11, 2008

**Panel:** Fuentes, Chagares, Van Antwerpen

**Opinion:** Chagares

**Tags:** Immigration, asylum, removal, adverse credibility determination

**Question(s) Presented:** Petition to review final order of IJ who made adverse credibility determination.

**Holdings:** Adverse credibility determination by IJ / BIA is supported by evidence.

**Rationale:** “the IJ found Bin not credible due to material inconsistencies within his testimony and between his testimony and his written affidavit.”

**Facts:** Chinese citizen claiming persecution for membership in Falun Gong. Arrived in U.S. through Mexico. CBP placed him in removal; he applied for asylum. Claims to have been arrested, beaten, and imprisoned for practicing Falun Gong.

**Procedural History:**

- **2005: IJ:** denied asylum application because testimony was not credible and (if it were found credible) it failed to meet burden of proof. Contradicted himself on cross-examination.
- **BIA:** affirmed.

**Appeals to Statute & Precedent:**

- ***Gao v. Ashcroft*, 299 F.3d 266 (3d Cir. 2002):** Credibility needs to be about something that goes to the heart of the claim. (Overruled by REAL ID Act of 2005)
- ***Sarr v. Gonzales*, 485 F.3d 354 (6th Cir. 2007):** attempts to enhance persecution story goes to the heart of the claim
- ***Damaize-Job v. INS*, 787 F.2d 1332 (9th Cir. 1986):** bolstering attempts v. minor discrepancies as to dates

**Discussion:**

- When respondent explained that he sometimes forgot what he had written in his statement while testifying before the IJ, “the inconsistency between Bin’s testimony and affidavit created the perception that Bin manufactured a story to tell to the IJ.” 127
- Discrepancy goes to the heart of the application—attempts to enhance claim of persecution.
- Demeanor when asked a question about how the authorities found out about his practices.