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United States Court of Appeals
Tenth Circuit

August 5, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DIEU D. BOKOLE UMBA,

Petitioner,

v.

MERRICK B. GARLAND, United States Attorney General,*

Respondent.

No. 19-9513
(Petition for Review)

ORDER AND JUDGMENT**

Before **PHILLIPS**, Circuit Judge, **LUCERO**, Senior Circuit Judge, and **CARSON**, Circuit Judge.

When a statute mandates that a lower tribunal consider the "totality of the circumstances" in making a credibility determination, we require that it do just that. And if it fails in this endeavor, we cannot uphold its determination.

Petitioner, Dieu D. Bokole Umba, a native of the Democratic Republic of Congo ("DRC"), fled the DRC and made his way to the United States where he

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* Pursuant to Fed. R. App. P. 43(c)(2) William P. Barr is replaced by Merrick B. Garland as the respondent in this appeal.

** This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

applied for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). The Immigration Judge ("IJ") found Petitioner incredible based exclusively on inconsistencies about his personal relationships with his significant other and his sister, and denied him all relief. The Board of Immigration Appeals ("BIA") concluded that the IJ committed no clear error and dismissed Petitioner's appeal.

Petitioner now seeks review of that decision and argues that the IJ clearly erred because his decision demonstrated that he disregarded the totality of the circumstances when he made the credibility determination. Petitioner argues that the IJ only considered evidence of Petitioner's personal relationships and failed to meaningfully consider anything else—including evidence about the harm Petitioner suffered in the DRC. We agree. Exercising jurisdiction under 8 U.S.C. § 1252, we grant the petition for review and remand for further proceedings.

I.

A.

Petitioner fled the DRC after being tortured for participating in the Union for Democracy and Social Progress ("UDPS")—a political party that opposes current DRC leadership. Petitioner details three violent encounters with the DRC's national intelligence agency—Agence Nationale de Reseignements ("ANR")—that motivated his flee to the United States. All three encounters occurred close in time to DRC elections.

Petitioner's involvement with the UDPS began in 2011. He attended weekly meetings, encouraged youth involvement, transported people and materials, and participated in public demonstrations. That same year the DRC held a presidential election, and the incumbent ran for re-election despite having exceeded the DRC's constitutional term limits. The election triggered widespread violence and unrest. And although some believed the UDPS candidate won, the incumbent refused to concede. With the administration of the oath of office approaching, the ANR tried to arrest Petitioner at his apartment. Fearing he would not survive custody, Petitioner fled to his neighbor's home and screamed for help. A struggle ensued and Petitioner managed to escape after sustaining an eye injury which required seven stitches. His neighbor did not—the ANR shot him.

In January 2015, the DRC government, still controlled by the incumbent's party, adopted a new law requiring a census before the next election. The UDPS saw this as a ploy to delay the election and allow the incumbent to remain in power. This perceived constitutional violation, again, triggered widespread violence and unrest. And during a UDPS protest of the new law, the incumbent's guards arrested Petitioner. Petitioner described the scene as chaotic, with guards killing some protestors and arresting others. Before his own arrest, Petitioner and his friends scrambled to collect their fellow protestors' lifeless bodies and transport them to the morgue. And during his arrest, guards repeatedly stepped on Petitioner and beat him with the backs of their guns. The guards loaded Petitioner into a pickup and took him to an ANR detention center.

At the detention center, ANR officers held Petitioner without food or water in a crowded, windowless cell for five days. The cell had no toilet, electricity, or ventilation. And because the ANR forced so many prisoners into this single cell, Petitioner had no room to sit or move. In the darkness, Petitioner struggled to breathe. His only reprieve from these conditions was for his daily beating. Day after day, guards removed Petitioner from his cell, beat him, and then returned him. The worst beating took place on the third day, when guards repeatedly stabbed Petitioner "all over" with a bayonet.

On the fifth day, a guard—who was a family acquaintance and member of Petitioner's tribe—intervened and helped Petitioner escape custody. The guard told Petitioner that if he had not intervened, Petitioner would have died. As a part of this intervention, the guard set up a transport which took Petitioner to Petitioner's cousin's house. The transport brought Petitioner most of the way, but Petitioner had to crawl from the street into the house because the injuries he sustained in custody were so severe he could not walk.

Although Petitioner sustained injuries requiring surgery, he avoided the hospital because he feared the hospital would contact the ANR. Instead he relied on a friend who worked at the hospital to perform surgery on him and provide him with medical care in his cousin's home. Petitioner took eight months to recover.

In 2016, as an election drew nearer, Petitioner attended a UDPS demonstration with two friends. The ANR opened fire at the protest. Again, Petitioner found himself collecting other protestors' dead bodies and moving them to the morgue. As

the situation worsened, he tried to flee. But the ANR continued to fire into the crowd. In a panic, Petitioner and his two friends fell to the ground and tried to lay low. Petitioner watched as the ANR shot and killed those who did not. The guards arrested Petitioner and his friends, and took them to an ANR detention center. At the detention center, an officer recognized Petitioner as the "one who escaped from prison" and told him "[t]his time it will be your end." Guards beat Petitioner and put him in a cell comparable to the one guards held him in after his 2015 arrest.

On his second day in custody, guards took Petitioner and his friends to a different room and tortured them. Petitioner watched as guards threw water on his friends and then, one at a time, put them in an electric chair. He listened to them scream. He watched the guards whip his friends and tie their hands to a metal bar "the way they put cows up when they do to butcher them." And then he watched as the guards shot and killed them. Then the guards started the same routine with him—they threw water on him, shocked him, whipped him, and tied him to a bar. They put bricks on Petitioner's back to weigh him down. At that point, Petitioner felt certain he "was losing [his] life." The bricks fell off, angering the officers who then put a bag over Petitioner's head and beat him until blood ran from his nose and mouth. Petitioner passed out and later awoke in a hospital with his leg handcuffed to the bed.

The same guard who helped him escape in 2015 manned his hospital bed. The guard warned Petitioner that if he kept working with opposition groups, he would "los[e] [his] life" or "be in prison forever." The guard encouraged Petitioner to leave the country and never come back. He next created a distraction so Petitioner could,

once again, escape custody. Petitioner then fled to a different cousin's house. Recognizing the danger Petitioner faced, Petitioner's cousin helped him cross the border that night to Brazzaville in the Congo Republic. Eight days later, Petitioner flew to Brazil where he remained for the next eight months. On May 10, 2017, Petitioner continued his journey to Costa Rica. There he encountered Banduka Hermance ("Hermance")—a woman with whom he had developed a romantic relationship in the DRC. They continued their journey together until reaching the United States border.

Petitioner offered evidence to corroborate his testimony. He submitted country conditions reports, news articles, and documents confirming his UDPS membership—including a UDPS membership card, a letter from another UDPS member, and a September 2016 arrest warrant.

Petitioner also submitted to a psychiatric evaluation, after which a doctor diagnosed him with Post-Traumatic Stress Disorder ("PTSD"). The psychiatrist performing the evaluation characterized Petitioner as "honest and forthright" but at several points "very distressed." The psychiatrist said, "there [was] little doubt that [Petitioner] ha[d] been tortured and had fled the DRC for his life and that the profound torture experience he had [] left a powerful mark on him." He explained that Petitioner's PTSD interfered with his ability to testify and manage interrogation. He also explained that Petitioner struggled to concentrate when he "felt at all threatened or challenged" and he had to "take time to reassure [Petitioner] and draw him back into the interview." Even still, Petitioner's PTSD "impaired his ability to

handle certain types of questions" even from a "gentle, but determined questioner" like the psychiatrist.

Petitioner submitted an affidavit from another psychiatrist who opined on how PTSD can affect a witness's ability to testify. The psychiatrist noted that PTSD can leave witnesses susceptible to the influence of suggestive questioning and cause them difficulty recalling "peripheral details" about their traumatic experiences. And because victims sometimes rely on dissociation to cope with trauma, they may experience difficulty "reconstructing the details of the experience" and "demonstrate cognitive symptoms such as confusion, disorientation, and impaired memory."

For reasons explained more fully below, the IJ found a portion of Petitioner's testimony and his corroborating evidence inadequate even though he apparently found Petitioner credible as to these facts.

B.

Petitioner also provided details about his personal relationship with Hermance during his credible fear interviews and the immigration court proceedings. The IJ found *this* portion of Petitioner's testimony problematic and thus denied Petitioner all relief and ordered him removed. The IJ noted that had Petitioner's testimony been "limited to the nature of his travels and the severity of the harm he suffered, the [IJ] may have found him persuasive," but "the numerous inconsistencies, evasive answers, and apparent falsifications about his personal relationships" compelled the IJ to make an adverse credibility determination. The IJ's reasoning centers on four issues—all of which relate to Petitioner's relationship with Hermance.

First, Petitioner's inconsistent description of his relationship with Hermance aroused the IJ's suspicions. During Petitioner's second credible fear interview he used the word "mwasi" when describing his relationship with Hermance. Depending on the context, mwasi can mean "wife," "woman," or "girlfriend." Petitioner and Hermance are not legally married. But, according to the Department of Homeland Security ("DHS"), Petitioner at one point represented that he and Hermance had been married for years and lived in the DRC together. When confronted with this inconsistency, Petitioner clarified that when he used the word "mwasi" he did not mean wife in the legal or traditional sense, he meant Hermance was his fiancé. Hermance testified during Petitioner's hearings and DHS asked her about their relationship as well. She verified that they had planned to marry but were unable to because they fled the country. The IJ partially excused Petitioner's inconsistent testimony based on translation error—"[t]he Court understands that the term 'mwasi' caused a miscommunication in interpretation, leading the asylum officer to believe that Hermance was [Petitioner's] wife, rather than girlfriend." Admin. R. at 355. But the IJ noted that this translation error did not explain why Petitioner testified that he had been married for years and lived with his wife in the DRC. Petitioner testified, however, that "when asked by the asylum officer about his wife, he thought the asylum officer was talking about the mother of this children," not Hermance.

Second, the IJ found it incredible that Petitioner and Hermance did not know more about the harm one another suffered in the DRC. When DHS asked Petitioner about the violence Hermance faced in the DRC, he responded that he did not know

the specifics but he did know that "she once met violence in the country." He said that he "did not have time" to talk to her about her treatment in the DRC and did not remember talking about why she left because he suffered from memory loss caused by the head injuries he suffered in the DRC. DHS also asked Petitioner if Hermance had been married before and if she had children. Again, Petitioner responded he did not know. He testified that "it is hard to know [a woman's] past life if you have not married her yet."

When asked whether he told Hermance about his own experiences, Petitioner again cited his head injuries and testified that he could not remember "because of all the torture [he] received." He explained that revisiting details of the harm he suffered left him feeling emotional, hurt, and fearful. So he tried not to talk about it—not even with Hermance. He also described that, in the DRC, men and women who are not married do not discuss private issues, particularly issues that might make the man appear weak.

Still, Hermance knew some details about Petitioner's experience. She knew the ANR arrested him during a protest, and that the ANR beat and tortured him. She knew that a guard ultimately helped Petitioner escape custody. And she also knew that Petitioner's injuries left him with back and testicle pain. But Petitioner told her that as a "man, he [would] live through it."

The IJ ultimately found Petitioner's testimony about his personal relationship with Hermance "very concerning, bordering on fraudulent." He thought "it [was] completely unreasonable for both Hermance and [Petitioner] to be unaware of the

harm that the other suffered" and that it "defie[d] reason" that Petitioner and Hermance did not know more details about one another.

Third, the IJ found it incredible that after Petitioner and Hermance individually fled the DRC, they fatefully ran into one another in Costa Rica. Petitioner testified that although he and Hermance had not planned to meet up in Costa Rica, they did by happenstance. But an asylum officer noted that during one of Petitioner's credible fear interviews he said he met Hermance in Brazil. When confronted with this inconsistency, Petitioner responded that he did not know why the asylum officer transcribed Brazil because he knows they met up in Costa Rica. Petitioner suggested that this miscommunication may have resulted from a translation error. During Hermance's testimony she corroborated that they had not planned to meet in Costa Rica. She explained that she believed Petitioner had died after the 2016 protests until she saw him in Costa Rica at a home dedicated to hosting immigrants. Apparently Hermance and Petitioner fled the DRC via a similar route before crossing paths—both lived in Brazil before going to Costa Rica and both left Brazil on May 10, 2017. But they both assert that this happened by coincidence.

The IJ stated that he "may have been willing to briefly suspend disbelief to consider and accept [this] extraordinary coincidence, if it were not for [Petitioner's] statements during his interview with an asylum officer that he and Hermance met in Brazil." But the IJ found the asylum officer's note "more worthy of belief" than Petitioner and Hermance's testimonies.

Fourth, the IJ found Petitioner and Hermance's testimony about Pascaline—Petitioner's sister—"confusing and conflicting." Petitioner and Hermance each had independent relationships with Pascaline—Pascaline was Petitioner's sister and Hermance's friend. Pascaline provided Petitioner with the documents he submitted with his I-589 and he included her on his application under the name Bokole Bolumbu. Pascaline also submitted a letter in support of Hermance's asylum application explaining that the two were friends from university and she had witnessed Hermance's kidnapping.

When asked about Pascaline and Hermance's relationship, Petitioner responded that he did not know whether the two women knew one another. He explained that he did "not know anything about their relationship because the relationship between women, they would never talk about it with me, their brother." Petitioner also did not know why the asylum officer reported that Petitioner described Hermance as having gone to school with his brother, when in fact she went to school with Pascaline—his sister. When DHS confronted Petitioner with this inconsistency a confusing exchange ensued and the translator had to stop and ask Petitioner to repeat his response. After some communication difficulty, Petitioner explained that translation error may have caused the inconsistent testimony.

DHS also asked Hermance about Pascaline. DHS asked whether Petitioner or Pascaline was older, and Hermance responded that she did not know. Although she called Petitioner Pascaline's big brother, she explained that the term for "big brother" in Congolese is a term of superiority rather than age. She testified that "men tend to

give themselves an older age" so although she knew Petitioner's birthday was November 16, she did not know Petitioner's true age. DHS asked Hermance why Petitioner believed she went to school with his brother—rather than his sister. And Hermance explained that she did not know why he thought that and that it must have been a "confusion." The IJ found these explanations unconvincing.

These four issues left the IJ with the "firm impression that [Petitioner] and Hermance did not have the shared romantic and political experiences they claim[ed] to have had in the DRC." The IJ questioned the fact that Petitioner testified in a "responsive and on point" way when asked about the "gruesome mistreatment" he faced in the DRC but "became shifty and vague" when asked about his "personal relationships and shared experiences with Hermance." So, the IJ found Petitioner incredible. He explained:

> If [Petitioner's] testimony was limited to the nature of his travels and the severity of the harm he suffered, the Court may have found him persuasive. However, [Petitioner's] numerous inconsistencies, evasive answers, and apparent falsifications about his personal relationships are not merely peripheral concerns to which the Court can turn a blind eye, but rather are intertwined with his alleged political activities and therefore go to the heart of his asylum claim.

He noted that in sum, "all of the discrepancies surrounding [Petitioner] and Hermance's relationship [were] so intertwined with the harm that he supposedly faced in the DRC and his membership in his political party that [Petitioner] [could not] be found credible." So the IJ denied Petitioner all relief and ordered him removed. Petitioner appealed to the BIA, which upheld the IJ's adverse credibility determination and dismissed the appeal in an order issued by a single board member.

Petitioner timely moved to reopen after the agency granted Hermance's application for asylum. The BIA denied his motion concluding that Hermance's credibility in her own application did not affect Petitioner's application. Petitioner also moved for reissuance of the BIA's decision because his counsel failed to tell him about the deadline for petitioning for review. As a remedy for his ineffective assistance of counsel claim, the BIA granted Petitioner's motion to reissue. Petitioner then filed this petition for review.

II.

"We review the BIA's legal determinations de novo, and its findings of fact under a substantial-evidence standard." Kabba v. Mukasey, 530 F.3d 1239, 1244 (10th Cir. 2008) (internal quotation marks and citation omitted). Under the substantial evidence standard, "our duty is to guarantee that factual determinations are supported by reasonable, substantial and probative evidence considering the record as a whole." Elzour v. Ashcroft, 378 F.3d 1143, 1150 (10th Cir. 2004).

"Where, as here, a single BIA member issues a brief order affirming the IJ's decision, we review the order as the final agency determination and limit our review to the grounds relied upon by the BIA." Hnut v. Lynch, 818 F.3d 1111, 1118 (10th Cir. 2016) (citing Uanreroro v. Gonzales, 443 F.3d 1197, 1203–04 (10th Cir. 2006)). "But, 'when seeking to understand the grounds provided by the BIA, we are not precluded from consulting the IJ's more complete explanation of those same grounds.'" Id. (quoting Uanreroro, 443 F.3d at 1204).

An IJ's credibility assessment is a factual finding and so typically we review it under the substantial-evidence standard. Elzour, 378 F.3d at 1150. When conducting such a review, we look to see if the IJ gave "specific, cogent reasons for disbelieving" the alien's testimony. Ismail v. Mukasey, 516 F.3d 1198, 1205 (10th Cir. 2008). "An IJ's finding that an applicant's testimony is implausible may not be based upon speculation, conjecture, or unsupported personal opinion." Chaib v. Ashcroft, 397 F.3d 1273, 1278 (10th Cir. 2005) (internal quotation marks and citation omitted).

But "[w]hen a lower court's factual findings are premised on improper legal standards or on proper ones improperly applied, they are not entitled to the protection of [a lesser standard of review]." Kabba, 530 F.3d at 1245 (quoting In re Kretzinger, 103 F.3d 943, 946 (10th Cir. 1996)). Instead, we review the lower court's factual finding de novo. Id.

III.

An alien's testimony alone may establish his eligibility for asylum. 8 U.S.C. § 1158(b)(1)(B)(ii). But he must convince the IJ that his testimony "is credible, is persuasive, and refers to specific facts sufficient to demonstrate that [he] is a refugee." Id.

When making a credibility determination the IJ must consider "the totality of the circumstances" and "all relevant factors." 8 U.S.C. § 1158(b)(1)(B)(iii). In doing so the IJ may base his credibility determination on the "demeanor, candor, or responsiveness" of the alien's testimony, "the inherent plausibility" of the alien's

account, and any inconsistencies or falsehoods in the alien's testimony or his witness' testimony. Id. He may do so no matter if the inconsistencies go "to the heart of the applicant's claim." Id. But the IJ cannot consider such inconsistencies in a vacuum and disregard all other aspects of an alien's claim. See Uanreroro, 443 F.3d at 1211 ("Consideration of 'all relevant factors' cannot mean ignoring the claim itself, including the applicant's testimony about [his] reasons for fearing persecution and the objective circumstances in the applicant's home country.").

IV.

On review, Petitioner argues that the IJ violated 8 U.S.C. § 1158(b)(1)(B)(iii) by failing to consider all relevant factors when making his adverse credibility determination. We agree. And because the IJ premised his factual findings on an improperly applied legal standard, we review his credibility determination de novo. See Kabba, 530 F.3d at 1245.

The easiest way to illustrate the IJ's failure to consider the totality of the circumstances is to revisit Section I of this order and the IJ's order. If the IJ had considered just the facts in Section I(A), about Petitioner's fear and mistreatment, he "may have found Petitioner credible." Admin. R. at 354. But considering only the facts in Section I(B) about Petitioner's personal relationships, the IJ made an adverse credibility determination. The IJ does not explicitly say he disregarded all of the evidence described in Section I(A). In fact, the IJ uses the "magic words"—"considering the totality of [Petitioner's] testimony and documentary evidence." But

stating the correct legal standard is not the same as applying the correct legal standard. Kabba, 530 F.3d at 1245. And on this record, we are unpersuaded the IJ applied the correct legal standard. True, the IJ can consider inconsistencies that do not go to the heart of the applicant's claim. But here the IJ did not just consider those alleged inconsistences. He treated them as dispositive. This runs contrary to § 1158(b)(1)(B)(iii)'s mandate that the IJ consider the "totality of the circumstances" and "all relevant factors" in assessing an alien's credibility.

Our job is to "ensure that agency determinations are substantially reasonable." Uanreroro, 443 F.3d at 1206–07 (internal quotation marks and citation omitted). A credibility determination based solely on Petitioner's personal relationship with Hermance is not *substantially* reasonable where additional evidence going to the heart of Petitioner's claim exists and is disregarded.

The IJ also did not explain his consideration of how translation errors and cultural differences may have contributed to any perceived inconsistencies. We recognize that "[i]nherent problems" exist "with credibility determinations in asylum cases" because aliens "rarely speak English and their testimony is plagued with the uncertainties of translation and cultural misunderstanding." Solomon v. Gonzales, 454 F.3d 1160, 1164 (10th Cir. 2006), superseded by statute on other grounds, as recognized in Mahomed v. Holder, 506 F.App'x. 688, 693 (10th Cir. 2012). So we will "affirm denial of asylum based on an adverse credibility finding only if the IJ or BIA has presented specific, cogent reasons for the finding." Id. (internal quotation marks and citation omitted.) Specific reasons require the "designat[ion] [of] a

particular or defined thing." Specific, Black's Law Dictionary (11th ed. 2019). And cogent reasons are those which are "compelling or convincing." Cogent, Black's Law Dictionary (11th ed. 2019).

In sum the IJ cited three inconsistent responses which he believed supported an adverse credibility determination. He also cited two topics he believed Petitioner should have been able to provide more robust testimony on. We address each inconsistent response and topic in turn, and conclude the IJ and BIA did not provide specific, cogent reasons explaining why these responses and topics supported an adverse credibility determination. Because the record lacks such an explanation, we remand for reconsideration under the totality of the circumstances standard.

A.

The IJ recognized that translation errors may have contributed to part of Petitioner's inconsistent testimony about his marital status. Because a person can translate "mwasi" different ways, the IJ appeared satisfied with Petitioner's explanation for that when he said mwasi, he did not mean "wife." Despite this acknowledgment, the IJ disregarded Petitioner's explanation that other inconsistent responses about his "wife" may also have resulted from translation issues.

The IJ said that a translation error did not explain why Petitioner testified that he lived with his wife in the DRC. But Petitioner explained that he believed these questions referred to the mother of his children—not Hermance. In one interview, conducted in Lingala, an asylum officer asked Petitioner, through a translator, the following—

Q: You told me you lived with your wife in the Congo, correct?
A: Yes.

Q: Where did you live with each other?
A: In Kinshasa.

[000160] "Mwasi" is a "Lingala word encompassing several meanings, including 'wife,' 'woman,' or 'girlfriend.'" So based on context, the IJ may have believed that "mwasi" referred to Hermance. But Petitioner may have believed that the asylum officer was asking about the mother of his children or he may have believed the officer was referring to Hermance. We cannot be sure which way Petitioner understood the question when he answered it. And the IJ does not meaningfully analyze Petitioner's proffered explanation for his inconsistent response. Instead, the IJ says "this error does not explain why [Petitioner] told the asylum officer that he and Hermance lived together, while testifying in Court that he only talked to Hermance rarely and only saw her once a week at political meetings." But the questioned asked was whether Petitioner and his *wife* lived together. The IJ's failure to consider how translation issues may have plagued this response proves especially problematic because on a separate occasion, Petitioner testified that he lived with the mother of his children in Kinshasa. This later testimony may support that when he said he lived with his mwasi in the Kinshasa, he meant the mother of his children.

Either way, the IJ did not explain why he considered translation issues to be a sufficient explanation in one context and not the other when the questioning involved the same word—"mwasi". See Uanreroro, 443 F.3d at 1207 ("Focusing on one statement in one document, which seemed to contradict the petitioner's testimony,

while simultaneously failing to address related portions of the same documents, which supported her testimony, does not demonstrate a reasonable, substantial and probative review of the evidence." (internal quotation marks and citation omitted)). Thus the IJ did not offer a specific, cogent reason for accepting Petitioner's explanation for his inconsistent response about his marital status but rejecting that same explanation for his inconsistent response about his living situation with his mwasi.

That said, the IJ did properly consider potential translation issues at other points during Petitioner's testimony. For example, the IJ found Petitioner incredible because during a credible fear interview he said that Hermance went to school with his brother—when in fact she went to school with his sister, Pascaline. This citation to a particular inconsistent statement renders the IJ's reason specific. And a review of the record supports his reason as cogent because when Petitioner explained that a translation issue may have caused the inconsistency, the IJ asked the interpreter whether in Petitioner's native language the word for brother was gender specific or whether it was a gender neutral equivalent like "sibling." The translator responded that the word was gender specific. The record thus evidences that the IJ followed up on Petitioner's proffered explanation and it supports the IJ's finding that Petitioner's explanation was incredible on this point.

The IJ also found it incredible that Petitioner and Hermance fatefully met up in Costa Rica and provided a specific, cogent reason for his finding. The IJ noted that he "may have been willing to briefly suspend disbelief to consider and accept the

extraordinary coincidence, if it were not for [Petitioner's] statement during his interview with an asylum officer that he and Hermance met in Brazil." By citing a particular inconsistent statement the IJ provided us with a specific reason. And the record evidences that this reason was cogent as well because the asylum officer asked Petitioner straight forward, clear questions:

> Q: Are you telling me that you found her in Brazil?
> A: Yes.
>
> Q: How did you know that she would be in Brazil?
> A: No, I didn't know, and she didn't know either. We just met like that.
> . . .
>
> Q: Did you two leave Brazil together?
> A: Yes.
>
> Q: Did you make your whole journey from Brazil to the US together?
> A: Yes.

Admin. R. at 175. The interviewer specified "Brazil" as the location for each question and avoided using ambiguous terms like "there" or relying on context clues to suggest location. Thus, the IJ had a specific, cogent reason for finding Petitioner's testimony—about where he and Hermance ran into one another—inconsistent in that instance.

So the question is whether two inconsistent responses—about which sibling Hermance went to school with, and about where Petitioner and Hermance first ran into one another—can support an adverse credibility determination. Because the IJ relied on more than just these two instances of inconsistent testimony, we cannot conclude that the IJ would have reached the same conclusion based upon them

alone—especially without evidence of or a finding that Petitioner intentionally misrepresented the facts. See Sarr v. Gonzales, 474 F.3d 783, 793–94 (10th Cir. 2007) (vacating BIA affirmance of IJ's adverse credibility determination in part because "the record suggests that the IJ and the BIA significantly overemphasize[d] the inconsistent nature of [the petitioner's] statements" and ignored the fact that his testimony "occurred through a translator"); Uanreroro, 443 F.3d at 1211 (holding that an adverse credibility determination could not be supported alone by petitioner's two lies that (1) her travel companion was her husband; and (2) the passport she carried was hers); Chaib, 397 F.3d at 1279 (reversing adverse credibility determination based in part of the conclusion that the IJ viewed the petitioner's evidence through "an American lens").

B.

The IJ also found Petitioner incredible because he and Hermance could not offer more detailed accounts of the harm the other faced in the DRC. Petitioner explained that in the DRC men and women who are not married do not discuss private issues. The IJ disregarded this cultural explanation, offering a specific reason for his disregard but not a cogent one. The IJ said that because "both [Petitioner] and Hermance [had] letters in support of their application by someone of the opposite gender" the IJ could not attribute the couple's lack of detailed sharing to cultural norms. Specifically, Hermance offered letters from her uncle and a male neighbor, and Petitioner offered a letter from his sister—Monique Bokole. Although a specific reason, this reason is not cogent because it is neither compelling nor convincing.

These letters were not part of the record of proceedings before the BIA. So we cannot review the level of detail those letters contained. Instead, we are left only with Monique's letter detailing that her brother "had been taken . . . following a peaceful march." That is the extent of detail Petitioner's sister provided.

Hermance testified to far more. She knew the ANR arrested and tortured Petitioner. She knew a guard helped Petitioner escape, and she knew he suffered from persistent pain in his back and testicles. On the evidence before us, Hermance knew more about the harm Petitioner faced than any other person, male or female. So the IJ's reason for disregarding Petitioner's cultural explanation has insufficient support in the record and thus is neither compelling nor convincing.

The IJ's finding that Petitioner should have known more about Hermance's individual relationship with Pascaline is flawed for a similar reason. Petitioner explained that, culturally, men and women do not share information about their relationships so he did not know the details of Hermance and Pascaline's friendship. The IJ questioned this but did not explain why. Like before, the IJ merely asserted Petitioner should have known more. But again, the IJ failed to offer any specific, cogent reason for *why* Petitioner's proffered cultural explanation was unconvincing or otherwise insufficient. Here, the IJ offered neither a specific *nor* cogent reason explaining why Petitioner was incredible because he could not offer a more detailed account of Hermance and Pascaline's relationship. And without such a reason or any record support, we cannot uphold the IJ's adverse credibility determination on that basis. Even still, an alien's admission of being uncertain about one issue, alone, does

not destroy his credibility. See Uanreroro, 443 F.3d at 1210 ("[B]ut this does not by itself destroy [petitioner's] credibility as a general matter, because she admitted to uncertainty about the issue."). Indeed, we have recognized that in some cases an admission of uncertainty reflects greater credibility than a falsehood or manufactured certainty—especially where a plausible cultural factor explains the uncertainty.

As far as Hermance's knowledge about Petitioner's birth order and age—the IJ again, without offering a specific or cogent reason, disregarded cultural explanations for Hermance's inability to answer the question and instead chalked it up to Hermance being "evasive." Admin. R. at 365. But again, uncertainty about one issue, alone, does not destroy Hermance's credibility as a witness.

Ultimately, the IJ made an adverse credibility determination citing the "inability of [Petitioner] and Hermance to provide sufficiently detailed and consistent narrative on both fronts." Admin. R. at 355. Except for Petitioner's two inconsistent statements—about which country he and Hermance fatefully met in and which sibling Hermance went to school with—the IJ does not draw our attention to any other inconsistent responses on which he based his adverse credibility determination. Moreover, Petitioner and Hermance testified consistently. They both said they planned to legally marry. They both said they began their romantic relationship in 2016. They both were generally familiar with the other's participation in UDPS and the violence one another faced. And where they were uncertain about some details, they testified consistently as to that uncertainty. To the extent the IJ found them incredible because he believed their accounts should have been more detailed, that

want for greater detail does not render Petitioner and Hermance's testimony inconsistent. Moreover, the IJ failed to provide us with specific, cogent reasons why Petitioner should have been able to provide more robust testimony or why Petitioner's cultural explanation as to why he was unable to do so was insufficient.

We remand for reconsideration under the totality of the circumstances standard.[1, 2]

[1] We GRANT Petitioner's motion for leave to proceed on appeal without prepayment of costs and fees. Having reviewed the Government's response to Petitioner's request that "Exhibit 6" be filed as part of the record on appeal, we DENY that request. According to Respondent, "Exhibit 6" was not part of the record before the BIA. We "limit our review to the grounds relied upon by the BIA", and if a piece of evidence was not before the BIA, it cannot have been a ground the BIA relied upon. See Hnut, 818 F.3d at 1118 (citing Uanreroro, 443 F.3d at 1203–04). So we cannot consider the contents of Exhibit 6.

[2] Petitioner requested that, should he succeed on appeal, we direct DHS "to facilitate" his return to the United States in accordance with Nken v. Holder, 556 U.S. 418, 435 (2009). The Government did not object to this relief in its brief. So we direct DHS to facilitate Petitioner's return and restore his immigration status to the status he had upon removal. See id. ("Aliens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by the facilitation of their return, along with restoration of the immigration status they had upon removal.").

The Petition for Review is GRANTED and the matter is REMANDED for further proceedings consistent with this Order and Judgment.

Entered for the Court

Joel M. Carson III
Circuit Judge