United States Court of Appeals
For the First Circuit

Nos. 21-1496, 22-1602

M.S.C.; L.Z.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney General,

Respondent.

PETITIONS FOR REVIEW OF AN ORDER OF THE
BOARD OF IMMIGRATION APPEALS

Before

Lipez, Howard, and Thompson,
Circuit Judges.

Sara Yang for petitioners in No. 21-1496. Aleksander Boleslaw Milch and The Kasen Law Firm, PLLC on brief for petitioners in No. 21-1496.

Sherease Pratt, Senior Litigation Counsel, United States Department of Justice, with whom Brian M. Boynton, Principal Deputy Assistant Attorney General, Civil Division, Anthony P. Nicastro, Office of Immigration Litigation, Civil Division, and Sheri R. Glaser, Office of Immigration Litigation, Civil Division, were on brief, for respondent.

Sara Yang, Yang & Sacchetti, P.C., Gilles Bissonnette, SangYeob Kim, American Civil Liberties Union of New Hampshire, and New Hampshire Immigrants' Rights Project on brief for petitioners in No. 22-1602.

Sherease Pratt, Senior Litigation Counsel, United States Department of Justice, with whom Brian M. Boynton, Principal Deputy Assistant Attorney General, Civil Division, Anthony P. Nicastro,

Office of Immigration Litigation, Civil Division, and Sheri R. Glaser, Office of Immigration Litigation, Civil Division, were on brief, for respondent.

October 24, 2023

THOMPSON, Circuit Judge. In this consolidated appeal, married couple M.S.C. and L.Z. ("the petitioners") seek judicial review of two Board of Immigration Appeals ("BIA") decisions: One affirming an Immigration Judge's ("IJ") denial of their application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") and the other denying their motion to reopen their proceedings. The basis for the petitioners' application for relief from removal is political persecution by Chinese officials seeking to enforce China's Family Planning Policy (the so-called one child policy in effect when the petitioners first entered the U.S.).[1] For the reasons we explain below, we deny both petitions.

BACKGROUND[2]

In March 2014, the petitioners, Chinese nationals, entered the U.S. on B2 tourist visas. Five months later, M.S.C. filed an application for asylum (including her husband as a rider on her application) on the basis of China's politics, claiming she had been subject to a forced abortion and sterilization procedure

[1] A heads up that China's official "one child" Family Planning Policy changed during the events described herein. We will describe these changes as they arise in the travel of these cases.

[2] We summarize how the petitioners' cases arrived on our bench using the administrative records, which include the petitioners' testimonies during the hearing before the IJ. See Adeyanju v. Garland, 27 F.4th 25, 31 (1st Cir. 2022).

in May 2013 after she became accidentally pregnant with her second child.[3]

The petitioners received Notices to Appear from the Department of Homeland Security in January 2015. On the day of their initial hearing (in September 2016), represented by counsel, M.S.C. conceded removability and sought relief from removal in the form of asylum, withholding of removal, and CAT protection (again, with her husband riding on her application).[4] The IJ designated China as the country of removal.

At the merits hearing in October 2018, both petitioners -- represented by the same counsel and assisted by a Mandarin language interpreter -- testified.[5] M.S.C. stated she graduated from college in China, married L.Z. in 2010, and gave birth to a daughter in 2011.

In recounting the odyssey that brought the petitioners to America, M.S.C. explained to the IJ that, in early May 2013, she visited a doctor because, after returning from a vacation in Japan, she "felt discomfort a lot." Tests revealed she was just

[3] In addition to asylum, M.S.C. applied for statutory withholding of removal, and withholding of removal under the CAT.

[4] From here on out we will use "relief from removal" to collectively refer to asylum, statutory withholding from removal, and CAT protection.

[5] The initial hearing in 2016 took place in New York but venue changed to Boston for the 2018 merits hearing.

over one month into pregnancy. M.S.C. knew the government was forcing abortions for those in violation of the country's one child policy enforced at that time and she was scared because she wanted to give birth to this second baby. She asked her doctor to delay reporting the pregnancy to the authorities as China law required. When M.S.C.'s supervisor at work approached her to say M.S.C. had to have an abortion because of the country's policy and the effect her second pregnancy would have on the company, M.S.C. knew the doctor had not obliged her request.

On May 13, family planning officials showed up at her work, held her arms and "dragged" her outside and into a white van. At this point in M.S.C.'s testimony, the hearing transcript indicates she offhandedly remarked: "I'm sorry. I'm emotional. Sorry." The IJ responded, "Okay. Do you need a minute or two to gather your thoughts?" to which M.S.C. replied, "I'm okay" and proceeded with describing the forced abortion procedure. Continuing with her recounting of events, she said the seizing officials took her to Beicheng Hospital. She "struggl[ed] . . . with all [her] might," but "[t]hey held [her] down on the bed and took [her] pants off . . . and tie[d her] hands and feet on the bed." M.S.C. described the procedure to the IJ, which she remembered lasting about an hour:

> So, there was a big light above me, and that was turned on. And so, there was a mask put over me. I remember I was not really that conscious. But I still

> felt very cold. And I felt there was some kind of instrument that was stuck into -- inserted in my vagina to open it. And then I heard some of machines like mmm, mmm, that kind of sound. And I felt that something very cold enter into my private parts.
>
> And I felt there was something that was moving out. And I felt that especially on my lower abdomen. The lower abdomen and on the two side that something is hanging down. I felt as though I was going to have a bowel movement. So, at the time I couldn't even tell that whether it was my tears or my sweat. And I felt that my body is being torn apart.
>
> And it was -- there was a little while after that, and I felt there was another substance or object that entered my body. It felt as though that it was being dragged outside, and also a scraping. It was scraping to bring it outside. Bring it out. Then a little while passed, and I -- this -- the sound of the machine was turned off. And my vagina then was dilated, and it was relaxed. At that time, they removed my mask. And I was conscious for a few minutes, because that light was really too bright. Very, very bright. And I saw somebody in the -- at the basin and somebody white in color, and something dark red inside the basin. Everything I felt. That's the end.

In addition to undergoing a forced abortion procedure, "an [intrauterine device] IUD was inserted" into M.S.C. without her consent. The nurse told M.S.C., "You will not get pregnant again, as you will not make another mistake." According to M.S.C., the IUD fell out a month later, but she told no one except her husband.

In the weeks following the procedure, M.S.C. sustained bleeding, inflammation, and a lesion on her cervix for which she sought treatment. Nightmares plagued M.S.C. "almost every night for quite some time" and she became unable to look after her daughter, so she sent her child to live with her parents. When M.S.C. and L.Z. traveled to the U.S., their daughter remained in

China living with M.S.C.'s father. M.S.C. testified that "a lot of kids in China . . . are raised up by their grandparents" because their lives after retirement "are a little boring" and many had only one child but wanted to have more.

Since arriving in the U.S. in March 2014, M.S.C. worked "in a biology lab . . . on DNA" and tried (unsuccessfully) to have another child. M.S.C. did become pregnant in 2015, but it turned out to be an ectopic pregnancy that necessitated termination.[6] M.S.C. also testified about consulting with an obstetrics and gynecology ("OB/GYN") doctor about her fertility options and she was told that she may be too old (at around 40 years old) to try in vitro fertilization.

At their hearing, the IJ questioned M.S.C. and L.Z. about whether they told M.S.C.'s medical providers in the U.S. about the forced abortion. Each petitioner answered in the negative. When asked why she hadn't disclosed this information, part of M.S.C.'s answer was clear (because it "was an experience [she] really [didn't] want to talk about"). But part of the answer was not so clear ("because my ignorance" and "she did ask me questions [about how many times I had been pregnant] . . . [s]o I did not answer

[6] "An ectopic pregnancy occurs when a fertilized egg implants and grows outside the main cavity of the uterus . . . most often . . . in a fallopian tube." Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/ectopic-pregnancy/symptoms-causes/syc-20372088.

questions like that"). There was no further probing from the IJ about what M.S.C. meant by her answer. L.Z., for his part, stated that he had not told the doctor about the forced abortion when he accompanied his wife to her appointments "because of our status at that time." When the IJ inquired whether they had told the doctor that M.S.C. had had an IUD, M.S.C. said they "mentioned" it "briefly" to the medical provider but then added, "[i]t doesn't mean that she write it down."

M.S.C. also testified that she does not want to return to China because she does not want the same procedure done to her again. At the time M.S.C. gave her testimony, her understanding of China's family allowance policy was that couples could have a second child only if both the husband and wife were only children, and M.S.C. has a sister.

M.S.C. and L.Z. provided several documents in support of their application for relief from removal, including a medical certificate reflecting an abortion procedure performed in May 2013 and the placement of the IUD, a medical certificate dated one month later reflecting cervical erosion, letters from M.S.C.'s sister and friend describing the change in M.S.C.'s demeanor after the forced abortion, letters from L.Z.'s mother and co-worker describing the changes in his behavior and affect after the forced abortion, a State Department country conditions report from 2017, and two articles about forced abortion practices in China. At the

IJ's request, M.S.C. showed the IJ and the government's attorney a document she brought with her to the hearing which she said was the original abortion medical certificate. The IJ described it on the record only as a "certificate taped to an eight and half by eleven sheet of paper."

The IJ also asked to see M.S.C.'s medical records from her providers in the U.S., but M.S.C. explained she had not brought any of those medical records with her to court because she "didn't think that they were was [sic] such a big connection between the report and this procedure and investigation of this incident." L.Z. told the court that he had all the records from the ectopic pregnancy termination at his home but had not brought them to court "[b]ecause we did not realize that this has something to do with our asylum application." The IJ never asked the petitioners to submit the records post hearing, nor did counsel for the petitioners do so.

In a written decision rendered two days after the hearing, the IJ denied the petitioners' application for relief from removal, concluding they had failed to meet their burden of proof because M.S.C.'s testimony was not credible, and the petitioners lacked properly authenticated corroborating evidence of the forced abortion and sterilization procedure. Specifically, the IJ labeled M.S.C.'s testimony about what she had disclosed (or not) to her U.S. medical providers about her medical history

"completely implausible," citing in support several aspects of the evidence disclosed during the hearing: M.S.C.'s "educational levels [and] the fact that [petitioners] were trying to have additional children," her ongoing exploration of fertility treatment options, the risks associated with the termination of an ectopic pregnancy which would warrant full disclosure of her prior reproductive healthcare to a treating physician, and the vagueness of her testimony about "events leading up to her forced abortion in China." The IJ also dinged M.S.C. and L.Z.'s credibility for not bringing M.S.C.'s U.S. medical records, calling their reason for not doing so not "adequate," and further noting their failure to request a continuance to provide this information relevant to their petition. The IJ found it "far more plausible . . . that no such forced abortion in China had ever occurred," and suggested that M.S.C.'s "ability to provide detail on the [feel and sound of the abortion] could just as easily have been from her knowledge of the procedure" terminating the ectopic pregnancy. Sounding off on the medical certificates which the petitioners provided, the IJ found them "not authenticated in any manner" and so "entitled to little evidentiary weight."

Continuing, the IJ deemed the letters submitted from relatives and friends "inconsistent" with M.S.C.'s testimony because the letters included details about the aftermath of the forced abortion and sterilization procedure that M.S.C. had not

relayed during her testimony, offering examples such as who picked her up from the hospital, her physical state as she left the hospital, and the number of follow-up medical appointments she attended after that day. The IJ further explained that the letters were not "afforded sufficient weight to meet the [petitioners'] burden" because the contents were "extremely vague," and the family members had "a personal interest in the outcome of the case" (though she did not explain what their personal interest would be).

The IJ went on to make findings about M.S.C.'s demeanor while testifying: "[S]uspect," she called it, because when M.S.C. became emotional she did not accept the IJ's offer for a break in her testimony "as if she was attempting solely to have the Court note her emotion for the record;" and evasive too because she did not give a "straightforward answer" about why, if M.S.C. told her doctor in the U.S. about the IUD, M.S.C. would not think the doctor had written this detail in M.S.C.'s records. Then, commenting on the way M.S.C. handled being questioned during the hearing, the IJ observed that M.S.C. answered her own counsel's inquiries quickly but "took far longer pauses" before answering questions from the government's attorney or the judge.

In conclusion, the IJ found the petitioners did not establish their fear of future persecution if removed from the U.S. and forced to return to China because the country conditions

report reflected that China had changed its national Family Planning Policy to allow married couples to have two children and the petitioners had not "satisfactorily demonstrated that they would be subject to harm" if they did indeed have "another child."

The petitioners appealed the IJ's denial of relief from removal to the BIA, challenging the IJ's adverse credibility finding as based on the IJ's improper personal assumptions and on the IJ's erroneous conclusions about the value of the corroborating evidence.[7] Unconvinced, the BIA dismissed the appeal, concluding the IJ's adverse credibility finding was not clearly erroneous because the IJ based her finding on "specific and cogent reasons" and her conclusions were "a permissible view of the evidence."[8] Regarding the corroborative evidence the petitioners submitted to the IJ, the BIA said the IJ "appropriately afforded the [medical] certificates little weight" because each was a single page document not properly authenticated pursuant to the governing regulation, adding that M.S.C. had not provided any explanation about why the certificates had not been authenticated. The BIA was dismissive

[7] The petitioners also argued that they were entitled to asylum on discretionary and humanitarian grounds, and eligible for withholding of removal and protection under the CAT.

[8] The BIA noted it was not relying on the IJ's finding about the length of M.S.C.'s pauses before answering the IJ's questions, which the petitioners had argued was not supported by any specific examples of pauses from the hearing.

of the letters submitted in support of M.S.C. and L.Z., discounting them because they were written by interested parties.

In December 2021, M.S.C. and L.Z. filed a petition for review of the BIA's decision with this court, raising challenges we'll discuss momentarily in our analysis. While this petition for review was pending, the petitioners obtained new counsel, who filed with the BIA a motion to reopen the proceedings based on new evidence obtained to corroborate the petitioners' claims for relief from removal.[9] Thereafter, the BIA denied the motion as untimely filed and the petitioners filed a second petition for review (asking us to reverse the BIA's denial of their motion to reopen), which we consolidated with the first case, and here we are.

DISCUSSION

With the details from the factual and procedural record spelled out, we proceed to consider the petitioners' arguments for

[9] There were actually a few things happening over the same time period. The petitioners filed a renewed I-589 application for asylum in December 2021, at about the same time as they filed their motion to reopen. This court heard oral argument for the first petition for review after the petitioners had filed their motion to reopen with the BIA but before the BIA denied the motion. Following the March 2022 oral argument on the initial petition for review, this court referred the case to its Civil Appeals Management Program (aka "CAMP"). The petitioners notified the court approximately two months later (while the motion to reopen was still pending before the BIA) that the case had not settled, returning the case to our bench to decide.

each of the petitions for review, beginning with the motion to reopen.

Motion to Reopen

When the petitioners sought to reopen their proceedings before the BIA pursuant to 8 U.S.C. § 1229a(c)(7), they argued they had new evidence to present that had not been available at the time of the asylum hearing because they had received ineffective assistance of counsel from the attorney they initially hired to represent them through their asylum process. The new evidence included psychological evaluation reports diagnosing M.S.C. with Major Depressive Disorder and Post-traumatic Stress Disorder ("PTSD") and summarizing three therapy sessions, the ectopic pregnancy record, M.S.C.'s infertility treatment records, notarized medical certificates from China including the certificate for the abortion and IUD placement, and a certificate reflecting a diagnosis for depression and anxiety following the forced abortion procedure.[10] The petitioners acknowledged the

[10] When a petitioner moves to reopen proceedings based on ineffective assistance of counsel, the petitioner must include the following documents:

> (1) an affidavit explaining the petitioner's agreement with counsel regarding legal representation; (2) evidence that counsel has been informed of the allegations of ineffective assistance and has had an opportunity to respond; and (3) . . . a complaint against the attorney filed with disciplinary authorities or . . . an explanation for why such a complaint has not been filed.

statutory deadline of 90 days from the entry of a final administrative order, see 8 U.S.C. § 1229a(c)(7)(A), (C)(i), but argued they were eligible for equitable tolling of this deadline (see infra n.15).[11]

In July 2022, the BIA denied the motion as untimely, summarily concluding that the petitioners had neither shown their eligibility for an exception to the 90-day statutory deadline nor that their situation was so exceptional as to warrant sua sponte reopening. The BIA did spill some ink, however, doubling down on its prior conclusions that the record amply supported the IJ's adverse credibility determination, especially given the petitioners' admitted failure to tell M.S.C.'s medical providers in the U.S. about the forced abortion in China. According to the BIA, the psychological reports explaining why M.S.C. would not have disclosed this traumatic experience to her new medical provider despite what it apparently viewed as its relevance to her

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Chedid v. Holder, 573 F.3d 33, 35 (1st Cir. 2009) (citing In re Lozada, 19 I. & N. Dec. 637, 639 (B.I.A. 1988)); see also id. at 35 n.4 (acknowledging one former attorney general's modification of these requirements had been revoked by the successor attorney general). Here, the petitioners submitted these required documents with their motion to reopen, including their former attorney's letter refuting their allegations of ineffective assistance at their 2018 asylum hearing.

[11] There is no indication in the administrative record that the government filed an objection to this motion to reopen.

attempts to have another child were "unpersuasive." In the BIA's words:

> [C]onsidering her college education, sophisticated employment as a biology lab DNA researcher, as well as her demonstrated efforts to become pregnant . . . [also] undermining her credibility [is her testimony] that she informed her OBGYN that Chinese authorities inserted an IUD in her, but remained unwilling to divulge the alleged forced abortion . . . . Moreover, it defies logic that mental health issues precluded the lead respondent from sharing relevant medical information with her physician, given that she readily informed her attorneys and the [IJ] of her alleged forced abortion.

In addition, the BIA concluded the notary certificates for the medical records from China did not "satisfy the authentication requirements [of] 8 C.F.R. § 287.6," but did not explain why. The BIA also commented that none of the exhibits submitted in support of the petitioners' motion to reopen demonstrated that they were prejudiced by their prior counsel's representation.

Before us with their challenge to the BIA's denial of their motion to reopen, the petitioners claim the BIA was wrong on four points: (1) that the notarial certificates for the abortion and sterilization record were insufficient for authentication purposes; (2) that the psychological reports were insufficient to explain why the petitioners had not told M.S.C.'s medical provider in the U.S. about the forced abortion; (3) that the petitioners were not entitled to a sua sponte reopening of the proceedings; and (4) that the petitioners had not addressed prior counsel's refutations of their ineffective assistance of counsel claims.

We generally review the BIA's denial of a motion to reopen for abuse of discretion, finding "an abuse of discretion only where the petitioner shows that the BIA 'committed a material error of law or exercised its authority arbitrarily, capriciously, or irrationally.'" Garcia Sarmiento v. Garland, 45 F.4th 560, 563 (1st Cir. 2022) (quoting Adeyanju v. Garland, 27 F.4th 25, 51 (1st Cir. 2022)).[12] But before we can consider the merits of the petitioners' challenge to the denial of their motion to reopen, as the government points out, we have a timing hurdle which implicates our ability to exercise jurisdiction over any of the petitioners' arguments in this aspect of the consolidated appeal. With few exceptions not relevant here, a motion to reopen must "be filed

[12] The petitioners acknowledge this standard of review but also assert that this court reviews the ineffective assistance of counsel part of the motion de novo because ineffective assistance claims arise from the due process clause of the Fifth Amendment. The cases they cite for support, however, do not back this asserted shift in the standard of review for their pending petition for review. See Hernandez Lara v. Barr, 962 F.3d 45, 53-54 (1st Cir. 2020) (stating de novo review applies to examining claim petitioner was denied statutory right to counsel when IJ denied request to continue a hearing date so petitioner could retain counsel); Saakian v. INS, 252 F.3d 21, 24-27 (1st Cir. 2001) (holding BIA abused its discretion by denying review of timely filed motion to reopen based on ineffective assistance of counsel -- ineffective assistance claim was not considered on the merits). More to the point, here the petitioners' challenge to the denial of their motion to reopen does not reassert the claim they made to the BIA that the ineffective assistance of prior counsel presented an extraordinary circumstance worthy of reopening the proceedings (focusing instead on the BIA's conclusion that they had not addressed their prior counsel's refutation of their ineffective assistance claim).

within 90 days of the date of entry of a final administrative order of removal." 8 U.S.C. § 1229a(c)(7)(C)(i). The petitioners filed their motion almost 180 days after the BIA dismissed their appeal. And the only argument they make to us to address the undisputedly untimely filed motion is that the BIA's "refusal to grant sua sponte reopening must be vacated" because the BIA made legal errors (identified in their briefing as failing to explain why the Chinese medical certificates were not properly authenticated and why the American mental health records were inadequate to rebut the adverse credibility determination) when it denied their motion to reopen.[13]

[13] We pause for a quick aside on equitable tolling. When it comes to motions to reopen, we have previously assumed without deciding that equitable tolling may be applicable when a movant can show they have diligently pursued their rights but "some extraordinary circumstance stood in [their] way." Molina v. Barr, 952 F.3d 25, 30 (1st Cir. 2020) (quoting Neves v. Holder, 613 F.3d 30, 36 (1st Cir. 2010)). However, we have not so definitively ruled. Quiroa-Motta v. Garland, 993 F.3d 25, 27 & n.1 (1st Cir. 2021) (quoting Molina, 952 F.3d at 30). See also Tay-Chan v. Barr, 918 F.3d 209, 214 (1st Cir. 2019). As such, "whether . . . motions [to reopen] may be equitably tolled at all remains an 'open question.'" Molina, 952 F.3d at 30 (quoting Pineda v. Whitaker, 908 F.3d 836, 841 (1st Cir. 2018)).

The petitioners asserted below that they were entitled to equitable tolling of the 90-day deadline but do not reassert this argument before us. They briefly mention equitable tolling in the section of their brief summarizing the relevant laws but do not articulate any argument as to why the BIA's conclusion that they did not adequately establish an exception to the deadline was wrong. As a result, any contentions about the application of equitable tolling are waived. See Viscito v. Nat'l Planning Corp., 34 F.4th 78, 87 n.14 (1st Cir. 2022) (failure to develop an argument in opening briefing to this court results in waiver).

"When a motion [to reopen] falls outside of the timing and number restrictions imposed by the [Illegal Immigration Reform and Immigrant Responsibility Act of 1996] and does not fit into one of the statutory exceptions, the only way for the petitioner to reopen proceedings is" to convince the BIA to "reopen them sua sponte, i.e., 'on its own motion' (nomenclature that we admit is confusing)." Thompson v. Barr, 959 F.3d 476, 480 (1st Cir. 2020) (citing Lemus v. Sessions, 900 F.3d 15, 18 (1st Cir. 2018)). "The BIA will only grant a motion sua sponte if it is 'persuaded that the respondent's situation is truly exceptional.'" Id. (quoting In re G-D-, 22 I. & N. Dec. 1132, 1134 (B.I.A. 1999)). Even then, this court has limited jurisdiction: We will only "review constitutional claims or errors of law that arise in motions to reopen sua sponte," and if we conclude "the BIA's denial of a motion to reopen rests on a legal error" we will "'remand to the BIA so it may exercise its authority against the correct legal background,'" id. at 483 (quoting Bonilla v. Lynch, 840 F.3d 575, 588 (9th Cir. 2016)), because an error of law is an abuse of discretion, id. at 480 (citing Cabas v. Barr, 928 F.3d 177, 181 (1st Cir. 2019)).

Here, while the petitioners' skeletal arguments about the BIA's refusal to reopen sua sponte are labeled as "legal errors," they actually only focus on their contentions that the BIA did not provide sufficient explanation about how the newly

proffered medical records were inadequately authenticated or not worthy of meaningful consideration rather than on how the BIA's rejection of these new records was an error as a matter of law. Moreover, as the government points out, the petitioners did not actually ask the BIA to reopen sua sponte though it is apparent the BIA understood them to do so when, in its denial of the petitioners' motion, it noted that "the respondents have not established an exceptional situation warranting sua sponte reopening." As such, the petitioners have not provided us with enough analysis to be able to conclude that the BIA's decision criticizing the new evidence was legal error.

Given the petitioners' motion to reopen was untimely filed and they have not shown the BIA committed legal error and thus abused its discretion when it declined to exercise its discretion to reopen sua sponte, we move on to the petitioners' initial petition for review challenging the agency's[14] denial of their application for relief from removal.

Application for Relief from Removal

The petitioners contend the BIA was wrong to deny their claims for asylum, withholding of removal, and CAT protection. They focus most of their argument energy on why they say the BIA

[14] We use "the agency" to refer to the IJ and the BIA collectively. See Loja-Tene v. Barr, 975 F.3d 58, 60 n.1 (1st Cir. 2020).

erred in adopting and affirming the bulk of the IJ's decision. Before we delve into examining the petitioners' particular challenges, it will be helpful to set forth the legal landscape which will govern our review.

Asylum protects individuals from removal who "can establish persecution on account of a legally protected ground" -- race, religion, nationality, membership in a particular social group, or political opinion. Aguilar-De Guillen v. Sessions, 902 F.3d 28, 33 (1st Cir. 2018) (citing Albathani v. INS, 318 F.3d 365, 373 (1st Cir. 2003); 8 U.S.C. § 1158(b)(1); § 1101(a)(42)(A); 8 C.F.R. § 208.13)).[15] Generally, "[t]o show that the circumstances the applicant endured constitute

[15] This court has recognized that those who are "'forced to abort a pregnancy' are presumptively entitled to asylum." Wen Feng Liu v. Holder, 714 F.3d 56, 58 (1st Cir. 2013) (quoting 8 U.S.C. § 1101(a)(42)(B)). Further, the Immigration and Nationality Act defines refugee in part as follows:

> For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

8 U.S.C. § 1101(a)(42). Because the IJ found M.S.C.'s abortion assertion not credible, this statutory presumption was not afforded to her.

persecution for purposes of asylum relief, [they] must show a certain level of serious harm (whether past or anticipated), a sufficient nexus between that harm and government action or inaction, and a causal connection to one of the statutorily protected grounds." Id. (quoting Martínez-Pérez v. Sessions, 897 F.3d 33, 39 (1st Cir. 2018)). "If a petitioner can prove [they] suffered past persecution while in [their] home country, a rebuttable presumption that [their] fear of future persecution is well-founded is triggered." Id. (citing 8 C.F.R. § 208.13(b)(1)). "Without past persecution, an asylum applicant can still show a well-founded fear of future persecution by showing that [they] genuinely fear[] future persecution and that [their] fears are objectively reasonable." Id. (quoting Martínez-Pérez, 897 F.3d at 39). In contrast, to prove the petitioners' claim for statutory withholding of removal under the Immigration and Nationality Act, § 241(b)(3), they must show a clear probability of persecution, a tougher standard than asylum's well-founded fear of persecution. See Loja-Tene v. Barr, 975 F.3d 58, 62 (1st Cir. 2020); 8 C.F.R. § 208.16(b).

And for its part, Article 3 of the CAT provides that "the United States has an obligation under international law not to 'expel, return (refouler) or extradite' a person to a country where there are 'substantial grounds for believing that [they] would be in danger of being subjected to torture.'" Aguilar-De

Guillen, 902 F.3d at 36 (quoting 8 C.F.R. § 208.16(c)(4)). To establish entitlement to protection pursuant to Article 3 of the CAT, an applicant "must show [they are] 'more likely than not' to be tortured if removed to a particular country." Id. (quoting 8 C.F.R. § 208.16(c)(4)). "The torture must be 'inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'" Id. (quoting 8 C.F.R. § 208.18(a)(1)).

When this court reviews the agency's decision to grant or deny applications for relief from removal, we recognize that "the IJ and BIA have different, but sometimes overlapping, roles." Adeyanju, 27 F.4th at 33. The BIA reviews the IJ's findings of fact for clear error only, id. (citing 8 C.F.R. § 1003.1(d)(3)(i)), and the IJ's legal conclusions as well as the IJ's exercise of discretion and judgment de novo, id. (citing § 1003.1(d)(3)(ii)). When the BIA adopts and affirms an IJ's decision "while adding its own gloss," Gomez-Abrego v. Garland, 26 F.4th 39, 44-45 (1st Cir. 2022) (quoting Martínez-Pérez, 897 F.3d at 39), the court reviews both decisions. The court examines "the IJ's findings of fact relied on by the BIA in support of its decision for substantial evidence, meaning we accept the findings 'as long as they are supported by reasonable, substantial and probative evidence on the record considered as a whole,'" Aguilar-De Guillen, 902 F.3d at 32 (quoting Singh v. Holder, 750 F.3d 84, 86 (1st Cir. 2014))

(emphasis ours), "and not merely of isolated pieces of it," Cuesta-Rojas v. Garland, 991 F.3d 266, 271 (1st Cir. 2021). We "reject the IJ's findings," only when "the record compels a contrary outcome." Aguilar-De Guillen, 902 F.3d at 32-33 (citing Thapaliya v. Holder, 750 F.3d 56, 59 (1st Cir. 2014)).

Adverse Credibility Determination

We'll start with reviewing the petitioners' contentions about the agency's adverse credibility determination because the petitioners' challenge to the agency's decisions primarily focuses on the bases for this finding and this finding then formed the basis for the agency's rejection of their application for relief from removal. Credible, specific testimony alone can support the grant of asylum, whereas a determination that an asylum seeker's testimony is untenable is a tougher hurdle to overcome. See Perlera-Sola v. Holder, 699 F.3d 572, 577 (1st Cir. 2012); 8 U.S.C. § 1158(b)(1)(B)(ii). That is so because we generally "accord significant respect to . . . witness credibility determinations" in recognition that "the IJ has the best vantage point from which to assess the witnesses' testimonies and demeanors." Ru Xiu Chen v. Holder, 579 F.3d 73, 79 (1st Cir. 2009). We will not accord deference, however, to the agency's findings or conclusions that "are based on inferences or presumptions that are not reasonably grounded in the record, viewed as a whole, or are merely personal views of the immigration judge." Cordero-Trejo v. INS, 40 F.3d

482, 487 (1st Cir. 1994) (internal citation omitted); see Sok v. Mukasey, 526 F.3d 48, 53 (1st Cir. 2008) (citing this principle from Cordero-Trejo after REAL ID Act of 2005 enacted).

Personal assumptions and expectations are what the petitioners argue the agency relied upon to justify its sweeping negative credibility finding. The petitioners assert that these personal views about how doctor-patient relationships should work lack record support and infected the agency's rationale for concluding the petitioners (1) would have told M.S.C.'s medical providers in the U.S. about the forced abortion experience if this trauma had actually occurred, and (2) could not have realistically thought the medical providers would not have made a note of her prior IUD if the petitioners had disclosed this part of the experience. Also lacking record support was the IJ's odd notions of what constitutes an acceptable demeanor when speaking about traumatic historical experiences (recall M.S.C. declined the IJ's invitation to take a break after she became emotional during her testimony causing the IJ to find her story fishy and suspicious). The petitioners contend the agency focused too narrowly on their testimony about what they did or did not tell M.S.C.'s medical providers in the U.S. to the exclusion of M.S.C.'s description of her forced abortion and the state-mandated contraception procedure she experienced. The petitioners emphasize here, as they did before the BIA, that language and cultural barriers, as well as a

desire to avoid reliving their traumas, naturally affected their communication with both the IJ and the medical providers.[16]

The government, for its part, counters that the petitioners cannot prevail on their petition for review because the record does not compel the positive credibility determination they prefer.

After reviewing the IJ's grounds for the adverse credibility determination as well as the BIA's adoption of most of these grounds (with additional gloss), we acknowledge up front that we are troubled by some aspects of the agency's reasoning and explanations, which we'll touch upon briefly in a moment. That said, because we are constrained by our deferential standard of review, we ultimately conclude (after considering the entire record before the agency at that time) that the credibility finding here was "supported by reasonable, substantial and probative evidence on the record" and that the record does not compel a

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[16] In their brief to the BIA, the petitioners asserted that

> [t]he IJ was dissatisfied with [M.S.C.]'s response based on her own assumptions regarding the extent to which a patient should be able to negotiate his relationship with his physician ([citation to hearing transcript]). Yet, not all patients are graced with the same level of articulation, poise, and sense of empowerment with respect to their relationships with their physicians that the IJ seemed to demand, especially in the face of language and cultural barriers.

contrary result. Aguilar-De Guillen, 902 F.3d at 32-33 (quoting Singh, 750 F.3d at 86). We explain.

The petitioners have characterized the IJ's bases for the adverse credibility finding as impermissible assumptions about the doctor-patient relationship. To be sure, the IJ deemed M.S.C.'s testimony about what she had and had not discussed with her medical providers in the U.S. "completely implausible" given M.S.C.'s advanced education, her scientific background, and her desire to have more children, thereby seeming to reason that any person in M.S.C.'s shoes would surely have offered to any physician providing her with ongoing reproductive healthcare all relevant information about her reproductive and abortion history. This conclusion was premised upon the record evidence. Remember, according to M.S.C., she wanted another child so much so that she and her husband had fled China's one child policy to effectuate this goal, leaving behind, in the process, their daughter. And the IJ had heard about M.S.C.'s persevering with her attempts to conceive naturally after being told by a doctor that she is "quite old," and no longer a candidate for in vitro fertilization. Plus, M.S.C. had experienced an ectopic pregnancy ending in its termination, yet that event had not prompted her to fully disclose her abortion history to her doctor.

Handed this recitation of events, the IJ repeatedly attempted to gain some clarity about what the petitioners actually

told the U.S. medical providers, but the transcript shows M.S.C. responded with vague and confusing answers, notwithstanding that at the outset of the hearing, the IJ provided a thorough explanation about how the hearing would proceed, including that "[i]f you don't understand one of [the attorney's] questions, don't guess at what it is that they mean. Just tell me you don't understand the question, and we'll find a better way to phrase it so that you do understand." Despite this explanation, M.S.C.'s answers were, at times, baffling. For example, the IJ asked M.S.C. whether "the doctor ask[ed] you about your history of how many children you've had and how many times you've been pregnant?" to which M.S.C.'s response is captured as "She did ask me questions regarding this. So, I did not answer questions like that." When the IJ asked M.S.C., "is there something about your meeting with [the doctor involved with the ectopic pregnancy diagnosis and termination] that makes you think she didn't write [the prior IUD insertion] down?" M.S.C. explained, "Because after she told me about the ectopic pregnancy, maybe because it was -- we were still hoping that we could keep the child. But she explained it to us. She said that you have to do surgery as soon as possible otherwise it would be very, very dangerous." Viewing the record in whole we cannot conclude that this testimony would not support the inference inherent in the IJ's reasoning and credibility finding, to wit: Given M.S.C.'s fervent desire and commitment to bearing another

child, it would be reasonably expected that each interaction M.S.C. had with health professionals would be geared towards achieving the goal of conception, including telling her doctor about all past medical incidents that might impact her ability to conceive.

Turning briefly to the demeanor evidence that accounted in part for the IJ's negative credibility determination: Recall that the IJ found that M.S.C. had faked emotion (for the benefit of the record reflecting her emotional state) based on M.S.C. remarking at one point during her testimony that she was emotional, but then declined the IJ's offer of a break from testifying. M.S.C. says, with an argument that has some force, that the "negative inference" from this declined invitation doesn't make sense. We note that the hearing transcript does not provide any clues as to M.S.C.'s affect or behavior or body language or gestures at the moment of this single exchange. So we are left in the dark about what M.S.C.'s demeanor may have communicated when the IJ took umbrage with M.S.C.'s response. Nor does the IJ explain her reasoning for why she chose to draw the adverse inference that M.S.C. was trying to manipulate how the IJ perceived her.[17] Nevertheless, given the deference we owe to the fact finder as the first-hand witness of the petitioner's demeanor, Ru Xiu

[17] Was M.S.C. sobbing at this moment? Were her eyes full of tears? Was she choked up? Or stoic? The record tells us nothing.

Chen, 579 F.3d at 79, the lack of detail in the record cuts in the IJ's favor -- there is nothing in the cold record that compels us to make a contrary inference on this point.

As we said before, aspects of petitioners' hearing give us pause in affirming the agency's credibility finding. We are appropriately sensitive to the petitioners' point about the intrinsic difficulties of communicating a traumatic experience.[18] We are also mindful of the cultural, linguistic, and immigration considerations which this court has previously indicated are important to keep in mind. See Diaz Ortiz v. Garland, 23 F.4th 1, 23 (1st Cir. 2022) (acknowledging the impact a language barrier can have on a petitioner's testimony during a hearing); id. at 24

[18] Research suggests that trauma survivors have a plethora of reasons why they may choose to share or not to share a traumatic experience even when withholding the information can be detrimental to their legal claims. See Becky L. Jacobs, Perpetuating Persecution: Mental Health and Psychosocial Barriers to U.S. Immigration, 27 Tex. J. C.L. & C.R. 1, 9 (2021) ("Case studies indicate that decision-makers in immigration processes often fail to understand how the experience of trauma and the symptoms of its psychological distress can impact the communications and memories of applicants." (citing Zachary Steel, Naomi Frommer & Derrick Silove, Part 1--The Mental Health Impacts of Migration: The Law and its Effects: Failing to Understand: Refugee Determination and the Traumatized Applicant, 27 Int'l J.L. & Psychiatry 511, 516-17, 523 (2004))); Sabrineh Ardalan, Constructive or Counterproductive? Benefits and Challenges of Integrating Mental Health Professionals into Asylum Representation, 30 Geo. Immigr. L.J. 1, 7 (2015) ("Without the support of mental health professionals, asylum seekers may, for reasons related to their trauma, not disclose the entirety of the human rights abuses they have . . . experienced, resulting in omissions that could prove detrimental to their legal claims.").

(citing 8 U.S.C. § 1158(b)(1)(B)(iii)) (requiring credibility determinations to consider "the totality of the circumstances, and all relevant factors . . ."); Hoxha v. Gonzales, 446 F.3d 210, 219-20 (1st Cir. 2006) (considering whether a language barrier resulted in the evidentiary inconsistency relied on by an IJ to support an adverse credibility finding); Cordero-Trejo, 40 F.3d at 490 (considering cultural background of petitioner and family members when evaluating one of the bases for adverse credibility determination); cf. Khattak v. Holder, 704 F.3d 197, 203 (1st Cir. 2013) (including cultural constraints in assessment of asylum applicant's internal relocation options). Some of these cultural and language considerations seem to have been in play here. For instance, when the IJ asked M.S.C., "it never occurred to you to mention the first abortion that you had?" M.S.C. replied, "Yes. I think maybe one of the reasons because my ignorance, and the other reason could be that that was an experience I really don't want to talk about." When the IJ asked L.Z. why he had not told his wife's doctor about the forced abortion in China when they learned about the ectopic pregnancy he replied, "[b]ecause of our status at that time." Yet, based on the IJ's credibility determination we can only gather that she did not deem cultural differences or linguistic barriers as accounting for the inconsistencies she perceived in the petitioners' testimonies or for the

implausibility she found of their tale. And the record does not compel a different result.

Another concern we note involves one of the ways the IJ justified the adverse credibility finding which was in fact completely belied by the record. The IJ wrote that M.S.C.'s "ability to provide detail" about the way the forced-abortion procedure felt "could just as easily have been from her knowledge of the procedure that she admitted she had in March 2015 when she had the ectopic pregnancy terminated." The IJ's accusation is, however, directly contradicted by M.S.C.'s personal statement appended to her initial application for relief from removal, signed August 18, 2014 (thus predating her March 2015 procedure by several months). This written account of the forced abortion experience is consistent with the description and detail in her 2018 hearing testimony.[19] She therefore could not have gained hindsight for her

[19] We note that the administrative record has a blank page where the certified English translation of M.S.C.'s personal statement should be, but we have every confidence that the translation was in the record before the agency. First, the certification of translation appears on the very next page in the record followed by the original statement handwritten in Chinese. Moreover, the petitioners' transmittal letter for their asylum application makes explicit reference to a personal statement attached thereto. We note that the updated administrative record filed in the consolidated appeal indeed includes the page with the English translation (while also missing parts of the asylum application form which were included in the administrative record filed in the initial and lead case). All this to say that, given some pages of the petitioners' application are missing from each of the administrative records provided to this court, we have every

description of the experience from a medical procedure that had yet to occur. And still, the IJ, as well as the BIA, missed, overlooked, or ignored this earlier, detailed, consistent narrative of her experience in China in 2013 even though the IJ remarked at the outset of the individual merits hearing that "I will say for the record, I've reviewed everything that's happened in the previous proceedings and everything that is in the written record before me, and I am fully familiar with both," and in her written decision that she had "fully familiarized [her]self with the record," which we take to mean that she read M.S.C.'s asylum application, including the personal statement attached to it. The record clearly suggests otherwise.[20]

Even taking our concerns into consideration, we cannot say, after conducting our whole record review, that the IJ's

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reason to believe the English translation of M.S.C.'s personal statement was in fact part of the record before the IJ.

[20] It is important to note the argument the petitioners are not making. They do not contend that a single error tainted the entire factfinding process, instead they assert that none of the bases on which the agency stood to justify the adverse credibility finding should hold up upon this court's review. Cf. Alam v. Garland, 11 F.4th 1133, 1137 (9th Cir. 2021) (emphasizing "there is no bright-line rule under which some number of inconsistencies [between the record and the reasoning used to conclude a petitioner was not credible] requires sustaining or rejecting the adverse credibility determination."); Singh v. Garland, 6 F.4th 418, 427 (2d Cir. 2021) (an adverse credibility finding "cannot stand" when a basis is disqualified and "the remaining non-disqualified bases are legally insufficient to satisfy the substantial evidence requirement.").

credibility finding is not a reasonable and rational view of the evidence, particularly given the sometimes nonresponsive and sometimes inapposite answers the petitioners provided when the IJ attempted to gain some clarity about her areas of concern. Thus, in the end, we necessarily conclude there is "reasonable, substantial and probative" evidence on the record, considered as a whole, to support the agency's adverse credibility finding, see Aguilar-De Guillen, 902 F.3d at 32 (quoting Singh, 750 F.3d at 86).

Reaching this conclusion does not complete our work. We march forward to examine the petitioners' claims of error about the agency according little weight to the corroborating evidence they submitted.

Corroborating Evidence

The petitioners say the agency was wrong to devalue two types of documentary evidence -- the medical certificates and the letters from family members and friends -- and to conclude this evidence did not independently establish their burden of proof. See Camara v. Ashcroft, 378 F.3d 361, 369-71 (4th Cir. 2004) (reinforcing that independent evidence -- even if circumstantial -- can establish past persecution even when the agency makes an adverse credibility finding against the petitioner). While the petitioners do not develop a detailed argument about how this evidence, independent of the adverse credibility determination,

gets them over the burden-of-proof finish line, for the sake of completeness we take up their arguments about why the evidence they submitted in each category was entitled to greater weight.

Medical Certificates

Of the two medical certificates M.S.C. submitted to corroborate the forced abortion procedure she relies on in her asylum application, one, dated May 13, 2013, states simply, "termination of pregnancy; conducted abortion; inserted with IUD" and includes a certificate of translation. The other certificate, dated June 15, 2013, includes, under a "symptoms" description: "Reexamine the IUD inserted; infected with minor cervical erosion, but would not affect female fertility" and it likewise includes a certificate of translation.[21] The record also includes a copy of each original certificate, written in Chinese and showing two seals stamped over the writing.[22] The IJ declined to afford these

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[21] Pursuant to 8 C.F.R. § 1003.33,

> [a]ny foreign language document offered by a party in a proceeding shall be accompanied by an English language translation and a certification signed by the translator that must be printed legibly or typed. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities.

The medical certificates meet this requirement to a T.

[22] In compliance with 8 C.F.R. § 1003.31(c), these originals were provided to the IJ for inspection during the hearing when she requested them.

documents "substantial weight" because they "had not been authenticated" pursuant to the parameters of 8 C.F.R. § 287.6 (requiring copies of official records to be attested by an authorized officer or by an official publication), and they also "contain[ed] little to no detail about the medical procedures [M.S.C.] had undergone in China." The BIA, relying exclusively on § 287.6, concluded the IJ "appropriately afforded the certificates little weight" because "they were not properly authenticated, as is required by the regulations."

The petitioners argue here that the agency should not have required authenticated medical certificates, particularly given the difficulty in obtaining authenticated documents from a government persecutor, when the medical procedures memorialized in the documents are the source of their claimed persecution and wherein the courts have recognized that § 287.6 is not the exclusive manner of authenticating records submitted to the agency in support of an application for relief. The government, for its part, asserts that the agency "reasonably determined that these documents deserved limited weight."

We do agree with the petitioners when they assert an agency's exclusive reliance on § 287.6 for authentication disregards this court's prior clarification that § 287.6 "offers only a method-not the exclusive method-for authenticating a record in an asylum case. Circuit courts, including this one, have

[commented] that noncompliance with the punctilio of 8 C.F.R. § 287.6 is not an absolute bar to the admissibility of a foreign document in an asylum hearing." Jiang v. Gonzales, 474 F.3d 25, 29 (1st Cir. 2007) (emphases added) (citations omitted); see also Xiu Xia Zheng v. Holder, 502 F. App'x 13, 16 (1st Cir. 2013) ("[A]uthentication requires nothing more than proof that a document or thing is what it purports to be . . . ." (quoting Yongo v. INS, 355 F.3d 27, 30–31 (1st Cir. 2004))). That said, the problem for petitioners is this. The agency did not exclude the certificates as inadmissible. It simply declined to afford them substantial weight, citing lack of authentication via § 287.6 as well as the lack of substantive detail on the certificates themselves. As we have previously noted, typically an agency's decision about the evidentiary weight that a purportedly corroborating document deserves is a valid exercise of its discretion. Pan v. Gonzales, 489 F.3d 80, 83 n.1 (1st Cir. 2017) (affirming IJ's decision to accord little weight to documents submitted as corroborating evidence when IJ found evidence in question (bail receipts) not "properly authenticated"); Hang Chen v. Holder, 675 F.3d 100, 107 (1st Cir. 2012) ("The BIA has discretion to deem a document's lack of authentication a telling factor weighing against its evidentiary value."). And nothing about the facts here causes us to deviate from that general rule. All up, we have no reason to say the agency's decision to afford

limited weight to the medical certificates the petitioners submitted to corroborate their claim was not adequately supported by the record.[23]

Letters of Support from Family & Friends

The petitioners also challenge the agency's decision to afford little corroborative weight to the letters submitted by their friends and family. They assert that these letters have greater heft and, in fact, greatly assisted them in meeting their burden of proof for their asylum claim. First, the petitioners argue that the IJ's finding that the letters were vague and inconsistent with their testimony is not explained in either the IJ's or BIA's decisions and, when scrutinized, has no support in the record. Second, the petitioners push back on the idea that the letters were written by so-called interested parties because

[23] We have acknowledged the difficulties petitioners may face in obtaining notarized copies of the official documents corroborating their claims of persecution by governments having fundamental operating systems at odds with comparable U.S. protocols including the Chinese government. See, e.g., Cabas v. Barr, 928 F.3d 177, 184 (1st Cir. 2019) ("[A]sylum applicants cannot always reasonably be expected to have an authenticated document from an alleged persecutor." (quoting Gui Cun Liu v. Ashcroft, 372 F.3d 529, 532 (3d Cir. 2004))); Gi Kuan Tsai v. Holder, 505 F. App'x 4, 8 (1st Cir. 2013) (citing Xiu Xia Zheng v. Holder, 502 F. App'x 13, 15–16 (1st Cir. 2013)) (acknowledging "the difficulty a Chinese citizen may have" obtaining authenticated records); Ren v. Ashcroft, 145 F. App'x 378, 382 (1st Cir. 2005) (acknowledging "it is not hard to imagine why authenticated records might be hard to obtain" after referring to unauthenticated hospital certificates produced to support the petitioner's claimed forced abortion and IUD procedure).

none of the authors stood to personally gain from the petitioners securing relief from removal.

We will not linger long here but do want to point out that while the IJ faulted the letters for being "extremely vague on any details of what the [petitioners] told them, when the abortion occurred, or the follow up care that they are aware of [M.S.C.] receiving" as well as inconsistent with parts of M.S.C.'s testimony, our careful review indicates there is actually no inconsistent information provided by the petitioners' family and friends in these letters when they are read alongside the petitioners' testimonies from the merits hearing. Moreover, despite the petitioners explicitly pointing out (in their brief to the BIA) that the IJ's criticism of supposed inconsistencies in one letter was misplaced because the basis of the criticism confused the author of one of the letters as being written by M.S.C.'s mother instead of L.Z.'s mother, the actual author of that letter,[24] the BIA accepted the IJ's conclusions about the low evidentiary value of the letters, placing most of its emphasis on

[24] The IJ faulted the letter purportedly from M.S.C.'s mother as not indicating she had been at the gynecological follow up appointments with M.S.C. when M.S.C.'s sister's letter had referenced that she -- M.S.C.'s sister -- and M.S.C.'s mother had attended several gynecological examinations with M.S.C. after the abortion. The record shows the sole letter submitted from a mother was in fact from L.Z.'s mother who neither M.S.C. nor L.Z. ever claimed had attended any medical appointments.

the IJ's point about "the letters [being] authored by interested parties."

While our review may lead us to disagree with the agency's finding that the letters are inconsistent with the petitioners' testimonies, precedent nonetheless constrains us to conclude that this disagreement does not amount to reversible error. In its own unchallenged jurisprudence the BIA has previously found (though, we note, without any explanation) that letters from family members may be accorded less weight because they "are interested witnesses who were not subject to cross-examination." Matter of H-L-H & Z-Y-Z-, 25 I. & N. Dec. 209, 215 (B.I.A. 2010) (abrogated on other grounds by Hui Lin Huang v. Holder, 677 F.3d 130 (2d Cir. 2012)). And our case law is clear -- unless the record compels a different result, the weight accorded to admitted evidence is squarely within the agency's purview. See Hang Chen, 675 F.3d at 107.

Denying Relief from Removal

While the petitioners focus most of their arguments before us on the adverse credibility determination and weight accorded to the medical certificates and letters, they also briefly argue M.S.C. "has a well-founded fear of persecution independent of the past mistreatment she suffered" because, they argue, they have met their burden to show a reasonable fear of harm if they are removed to China based on China's continued enforcement of the

Family Planning Policy. The basis for this argument, however, continues to rely primarily on their asserted punishment for their alleged violation of the one child policy in effect before they left China. Because we have upheld the agency's conclusions that the petitioners' testimonies were not credible and the corroborative evidence was not entitled to much weight, the petitioners have no evidence left on the record from which we could conclude they established a well-founded fear of future persecution.[25] See Segran v. Mukasey, 511 F.3d 1, 5, 7 (1st Cir. 2007) (A negative credibility finding can, "by itself," support "a conclusion that [the petitioner] has not proved a well-founded fear of persecution."). To the extent the petitioners rely on the country conditions report they submitted with the application for relief from removal, this report does not add any further support to bolster the claims because, as the IJ stated, the report showed a substantial change in China's Family Planning Policy since the petitioners arrived in the United States. Beginning in January 2016, every couple could choose to have two children and, under certain circumstances, be granted permission to have a third child.

[25] So too with M.S.C.'s contention that she qualifies for a humanitarian grant of asylum. 8 C.F.R. § 208.13(b)(1)(iii)(A) provides that the agency has the discretion to grant asylum to an applicant who (if not disqualified for other reasons) "has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution." Because M.S.C. has not met her burden to prove past persecution, she is not eligible for this relief.

See 8 C.F.R. § 208.13(b)(1)(i)(A) (an IJ may deny an asylum application if "[t]here has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality").

After our thorough review of the whole record and faithful application of the applicable standard of review, there is substantial evidence to support the agency's decisions in this case and we are not compelled to reach a contrary decision about the merits of the petitioners' application for asylum. See Aguilar-De Guillen, 902 F.3d at 32-33.[26]

CONCLUSION

For the reasons explained above, the petitioners' petitions for review are **denied**.

[26] Because the petitioners have not met the standard for asylum, they "necessarily cannot meet the higher standard for withholding of removal." Jinan Chen v. Lynch, 814 F.3d 40, 46-47 (1st Cir. 2016) (quoting Attia v. Gonzales, 477 F.3d 21, 24 (1st Cir. 2007)).

As for the CAT claim, while the adverse credibility determination does not necessarily doom this claim, Wen Feng Liu v. Holder, 714 F.3d 56, 61 n.1 (1st Cir. 2013) ("[A]n adverse credibility finding that is fatal to an asylum application is not automatically fatal to a CAT claim."), the petitioners' arguments for CAT protection rely on the same evidence as that deemed not credible. As a result, the petitioners have not met their high burden to show it is "more likely than not" M.S.C. would be "tortured if removed to" China. Aguilar-De Guillen, 902 F.3d at 36.