

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
HONOLULU, HAWAII**

File No.: **A# 219-032-414**

In the Matter of:

WANG, Chunming,

Respondent.

DETAINED

IN REMOVAL PROCEEDINGS

CHARGE: § 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA) — *not in possession of a valid entry document*

APPLICATIONS: (1) Adjustment of Status under INA § 245(a)
(2) Waiver of Inadmissibility under INA §§ 212(a)(3)(D)(iv) and 212(d)(11)
(3) Asylum under INA § 208
(4) Withholding of Removal under INA § 241(b)(3)
(5) Protection under Article 3 of the United Nations Convention Against Torture (CAT)

ON BEHALF OF THE RESPONDENT:

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ON BEHALF OF DHS:

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DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

The Respondent, a native and citizen of China, last entered the United States on January 3, 2020, on an advanced parole which expired on December 31, 2020. Exh. 1. The Respondent previously entered the country under a B2 visa on July 3, 2018. Exh. 16 at 16. On September 16, 2019, the U.S. Citizenship and Immigration Service (USCIS) approved the I-130 petition filed by the Respondent's United States citizen daughter. Exh. 28 at 55. The Respondent filed a Form I-485, Application to Register Permanent Residence Status, which USCIS denied on May 30, 2025. Exh. 2 at 5-27. On June 4, 20225, the Department of Homeland Security (DHS or Department) personally served the Respondent with a Form I-862, Notice to Appear (NTA), alleging removability under § 212(a)(7)(A)(i)(I) INA. Exh. 1. Jurisdiction vested and removal proceedings commenced on June 4, 2025, when DHS filed the NTA with the Court. *Id.*; *see also* 8 C.F.R. § 1003.14(a).

The Respondent, through counsel, denied the factual allegations, contested the charge of removability contained in the NTA and orally moved to dismiss the removal proceedings; he also filed a Motion to Terminate Removal Proceedings. Exh. 4. DHS filed its opposition on July 1, 2025. Exh. 5. Following a contested removability hearing held on August 6, 2025, the Court denied the motion. Exh. 6. Additionally, the Respondent's attorneys' request to withdraw as counsel was granted. Exh. 7. The Respondent did not submit documentation supporting his position despite the multiple opportunities provided by the Court. On September 25, 2025, the Court sustained factual allegations 3, 4, 5, and 6 contained in the NTA. Based on the evidence on the record and the Respondent's testimony, the Court found that removability had been established by clear and convincing evidence and designated China as the country of removal should removal become necessary. *See* INA § 240(c)(3)

As relief from removal, the Respondent applied for asylum, withholding of removal and protections under CAT. Exhs. 16, 52. The Respondent also renewed his adjustment of status application and requested waiver of inadmissibility. Exhs. 28, 50, 51. The Court conducted merits hearings on October 15, 2025, October 30, 2025, December 3, 2025, January 22, 2026, April 2, 2026, and April 28, 2026.

Having considered all of the testimonial and documentary evidence in the record as well as the applicable law, the Court makes an adverse credibility finding, finds that the Respondent failed to meet his burden of proof and denies the applications for asylum, withholding of removal and protection under CAT, denies the Respondent's applications for adjustment of status on discretion and grants post-conclusion voluntary departure. At the conclusion of the April 28, 2026, hearing, the Court provided the parties with a summary of the Court's decision and reserved the case for a written decision¹.

II. SUMMARY OF EVIDENCE

The Court carefully considered—individually and collectively—all evidence of record, regardless of whether specifically referenced herein. *See* 8 C.F.R. § 1240.1(c).

A. Documentary Evidence

Exhibits 1 through 53 were marked and entered into evidence.

B. Testimony

The Respondent, the Respondent's daughter, Yunlu Wang, and Kate Zhou testified in the removal proceedings.

III. STATEMENT OF FACTS

Regarding his Form I-589 application, the Respondent submitted a declaration and supporting documents claiming that he suffered persecution from the Chinese government on

¹ The case has been reassigned to the undersigned Immigration Judge who has reviewed the entirety of the record, as required by 8 C.F.R. §§ 1240.1(b).

account of his political opinion. He indicated that he is “the person in China who [is] most strongly opposed the Communist Party” and suffered persecution by being repeatedly investigated for tax evasion. He also claimed that his family suffered persecution because of his father’s political activities. The Respondent is afraid to return to China fearing that the communist party will further prosecute and harm him. The Respondent also stated that he is unwilling to surrender the substantial amount of funds he and his company deposited in communist party banks.

USCIS denied the Respondent’s I-485 application finding that the Respondent was not eligible to adjust status as he was deemed inadmissible for permanent residence due to alien smuggling under INA § 212(a)(6)(E)(i) and due to his membership in a communist or any other totalitarian party under INA § 212(a)(3)(D)(i). Exh. 2 at 5-27. Regarding the alien smuggling charge, the Respondent his daughter, Yunlu Wang, testified as to her employment in his company, the trip to Chicago in 1997 to attend the conference where she traveled as the Respondent’s personal translator and her subsequent enrolment with San Francisco State University for language studies. The Respondent also testified as to his association with Liu Li, Mei Fan, Wenlu Zhai and Song Haibin.

Regarding his CCP membership, the Respondent and his witness, Kate Zhou, testified that in China, the government sends a party secretary to supervise a successful company. As the Respondent’s company in China progressed into a big and successful company, the CCP party sent a party member to run his company. At his I-485 interview before USCIS, the Respondent admitted that he was still a member of the CCP, otherwise they would seize his properties. Exh. 2 at 7. The Respondent testified that he never applied to be a member of the CCP and he was involuntarily admitted to the party in 1991 and was required to submit to the rules and requirements of the party. The Respondent claimed that he asked to withdraw from the party many times and that his request was finally acted upon in 2022 with the formal notice of withdrawal issued by the party.

IV. LAW AND ANALYSIS

A. Credibility and Burden of Proof

An alien applying for relief or protection from removal bears the burden of proving that he satisfies the applicable eligibility requirements. *See* INA § 240(c)(4)(A)(i); 8 C.F.R. §§ 1208.16(c), 1208.17(a), 1240.8(d); *see also Matter of M-B-C-*, 27 I&N Dec. 31 (BIA 2017). To determine whether an applicant has met his burden of proof, the Court considers the credibility, persuasiveness, and factual basis of the evidence offered in support of the applicant’s claim. *Garland v. Ming Dai*, 141 S.Ct.1669, 1680 (2021) (citing INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C), 240(c)(4)(C)). The REAL ID Act applies in this case. *See* Section 101(a)(3) of the REAL ID Act, INA § 208(b)(1)(B)(iii); *see also Malakandi v. Holder*, 576 F.3d 906, 917 (9th Cir. 2009). Testimony alone may be sufficient to meet a respondent’s burden if such testimony is credible, persuasive, and fact specific. *Garland v. Ming Dai*, 141 S.Ct. at 1680. The Court must make a decision based on “the totality of the circumstances” using a commonsense approach that takes into consideration the individual circumstances of the specific applicant. *Shrestha v. Holder*, 590 F.3d 1034, 1040–41 (9th Cir. 2010). The Court must provide “specific” and “cogent” reasons for

discrediting a witness. *Id.* at 1044. Moreover, in weighing credibility, the Court should consider the applicant's explanation for any inconsistencies. *Id.*

A respondent may be found incredible on account of inconsistencies. *Shrestha v. Holder*, 590 F.3d 1034, 1040. A respondent's opportunity to explain the inconsistency may occur in direct examination or cross-examination, however, "[o]nce the IJ has provided a specific, cogent reason for disbelieving the alien's rationalization, the IJ need not offer the alien another opportunity to address the IJ's concerns, which the IJ would then need to address again." *Rizk v. Holder*, 629 F.3d 1083, 1088 (9th Cir. 2011)

A significant inconsistency exists in the record regarding the Respondent's claim that he did not receive any benefit from his CCP membership. When the Respondent was confronted with the inconsistency, he provided inadequate responses. In fact, he continued to deny that he received any benefit from the CCP. The Court even played the recording of his testimony where he stated, "*since I constructed the democracy wall, they did [not] arrest ... that was mercy towards me ...*" yet the Respondent continued to deny he received a benefit from the CCP. The record is also inconsistent regarding the Respondent's claim that he has not violated any laws in the United States. He continued to maintain that he did not smuggle his daughter or any alien into the United States, yet, admitted that he and his company sponsored his employees for B1/B2 visa and had them work for him in the United States which is a clear violation of our immigration laws. The Respondent's testimony that the democracy wall was violently destroyed is also inconsistent with the documentary evidence. Exhs. 11 at 2, 20 at 2, 27 at 51-53. The photos do not suggest chaos and violence as they were dismantling the structure. The Respondent also did not submit sufficiently rehabilitative corroborating evidence, despite the many opportunities that the Court has given to the Respondent. The record shows that the Respondent submitted a total of 31 exhibits yet none of these exhibits rehabilitate the Respondent's incredible testimony. The Respondent repeatedly submitted documents from his accountant, the purchase documents of his family's cemetery lots, his Hawaii business licenses and printout of his company's stocks' but none of these documents address the inconsistencies in the record. The Court finds his responses and explanation unsatisfactory as it does nothing to explain the reason for the inconsistency. *See Yali Wang*, 861 F.3d at 1008 (holding that the Court may consider all relevant factors, including "the inherent plausibility of the petitioner's account" (citation omitted)); *see also Cui v. Holder*, 712 F.3d 1332, 1335-36 (9th Cir. 2013) (adverse credibility determination properly based partially on implausible testimony).

The Court also finds that the Respondent was not candid and truthful to the Court. The Court may consider the "demeanor, candor, or responsiveness" of the applicant in evaluating the credibility of the applicant's testimony. *See* INA § 208(b)(1)(B)(iii); *Lalayan v. Garland*, 4 F.4th 822, 839 (9th Cir. 2021). Instead of providing direct answers to certain questions, the Respondent provided obscure explanations that often led the Court or counsel to repeat the question or ask it in a different way. Indeed, numerous times, the Court deemed the Respondent non-responsive and admonished him that he had not answered the questions asked of him. The Court's notations on the record of the Respondent's vague and confusing responses provided him with fair notice of his evasiveness and non-responsiveness and contribute to the Court's non-credibility finding. *See Ling Huang v. Holder*, 744 F.3d 1149, 1154 (9th Cir. 2014) (upholding an IJ's adverse credibility determination based on demeanor where the Court pointed out the respondent's pattern of

unresponsiveness and specifically noted the respondent's failure to respond on the record). In all his hearings, the Respondent appeared combative and indignant. He demonstrated a tendency to conflagrate situations and air it out as injustice or inhumane treatment. He claimed unjust treatment at the detention center and when asked to elaborate, the Respondent described the process of being required to strip down for inspection, of being made to take a urine test, of having a hard bed which caused his body to be sore, of not being provided distilled water for his CPAP machine. The Respondent repeatedly stated that someone of his wealth and stature should be treated differently. At the April 28, 2026 hearing, the Respondent in fact informed the Court that it should recommend him to the higher level as a special, outstanding talent, even comparing himself to Albert Einstein.

When asked how he is doing, the Respondent will give a litany of his complaints and ailments. Similarly, when asked if he received a DHS filing, he would respond he didn't and when the Immigration Judge indicated the hearing would be adjourned to give him time to receive and review the document, he would state that he has the documents. When asked "do you understand?", the Respondent would answer "the power is on your hand". When asked if he wants to apply for asylum, the Respondent replied by referencing his millions of investments in the United States since 2015. The Respondent is also very disruptive and would keep talking over the Immigration Judge, the interpreter and the attorneys. The Respondent also repeatedly asked to be released despite the Immigration Judge explaining to him multiple times why he cannot be released on bond. The Court endeavored to explain to the Respondent as to why his case is not progressing in a typical pace for a detained case, that his hearings keep getting continued because of missing items from the Respondent. The Respondent's demeanor and unresponsiveness affect the appearance of truth of his claim as he seemed to lack familiarity with pertinent details of his own claim. *See Kin v. Holder*, 595 F.3d 1050, 1056 (9th Cir. 2010) (providing that an IJ must explain reasons why the respondent's demeanor detracts from his credibility). The Respondent was given numerous opportunities to respond to certain questions or provide specific details, was advised on multiple occasions to listen carefully, respond directly to the questions asked of him, and was informed each time he failed to answer a question. However, the Respondent only provided vague and non-responsive testimony.

In addition to his non-responsive answers, the Respondent exhibited visible signs of distress that the Court specifically noted on the record. *See Manes v. Sessions*, 875 F.3d 1261, 1264 (9th Cir. 2017) (stating that an adverse credibility finding based on demeanor may be supported by an IJ's specific references to details such as "the expression of [the respondent's] countenance, how he sits or stands, whether he is inordinately nervous, [and] his coloration during critical examination") (internal quotations and citations omitted). Here, the Court noted on the record that at one point during his testimony, the Respondent was growing agitated during DHS' cross-examination where the Court had to adjourn the hearing because the Respondent became unruly and started insulting the counsel for the government. In another instance, the Court again had to adjourn the hearing due to the Respondent failing to provide supporting documentation. This agitated the Respondent and when the Immigration Judge left the courtroom to get hearing dates, the Respondent burst into a tirade and disregarding the Immigration Judge's instructions. Exh. 42.

Even if an adverse credibility was not warranted based on the inconsistency, demeanor, and unresponsiveness discussed above, the Court has serious doubts about the credibility of the testimony, which it does not find to be otherwise credible. *See Aden v. Holder*, 589 F.3d 1040, 1044 (9th Cir. 2009); *see also Singh v. Holder*, 753 F.3d 826, 836-837 (9th Cir. 2014); INA §§ 208(b)(1)(B)(ii), 241(b)(3)(C). The Respondent was asked about these inconsistencies, and he did not provide a reasonable and plausible explanation for the perceived inconsistency. There was also a lack of meaningful documentation submitted to meet his burden of proof to demonstrate that he suffered persecution and has a well-founded fear of persecution on account of his political opinion.

In the aggregate, the incongruous details pertaining to the heart of Respondent's claim of asylum, and his demeanor bear negatively on his credibility. *Ren v. Holder*, 648 F.3d 1079, 1084 (9th Cir. 2011) ("Under the REAL ID Act, the IJ may base an adverse credibility determination on any relevant factor that, considered in light of the totality of the circumstances, can reasonably be said to have a 'bearing on petitioner's veracity.'" (quoting *Shrestha*, 590 F.3d at 1044)); *see also Rizk v. Holder*, 629 F.3d 1083, 1088 (9th Cir. 2011) ("[E]ven minor inconsistencies going to the heart of a petitioner's claim may, when considered collectively, deprive [the] claim of the requisite ring of truth, thereby supplying substantial evidence that will sustain the IJ's adverse credibility determination." (internal citation and quotation marks omitted)). Therefore, based on the "totality of the circumstances and all relevant factors," the Court finds that the Respondent has failed to meet his burden to show eligibility for asylum, withholding of removal, or protection under CAT as he is not a credible, persuasive witness. *See* INA § 208(b)(1)(B)(iii); *see also Alam v. Garland*, 11 F.4th 1133 (9th Cir. 2021) (rejecting the single factor rule and holding that an adverse credibility finding requires assessment of the totality of the circumstances); *Ming Dai*, 141 S.Ct. at 1681.

Conclusively, the Court finds that the few objective documents submitted by the Respondent do not sufficiently corroborate his fear of future persecution claim nor rehabilitate his incredible testimony. As such, after considering the totality of the circumstances and all relevant factors, the lack of corroborating and rehabilitative testimony or evidence at the subsequent hearing compels the conclusion that the Respondent has not met his burden of proof. *See Alam*, 11 F.4th 1133.

B. Adjustment of Status under INA § 245(a)

The Court may adjust the status of any respondent who was inspected and admitted or paroled into the United States to that of a legal permanent resident. INA § 245(a). To be eligible for adjustment of status, an applicant must: (1) file an application for adjustment of status; (2) be eligible to receive an immigrant visa; (3) be admissible to the United States for permanent residence; and (4) have an immigrant visa immediately available to him at the time his application is approved. *Id.*; 8 C.F.R. § 1245.1(a). Additionally, the applicant bears the burden of showing that relief is warranted in the exercise of discretion. *See* 8 C.F.R. § 1245.1; *Matter of Blas*, 15 I&N Dec. 626, 629 (AG 1976); *Matter of Arai*, 13 I&N Dec. 494, 495 (BIA 1970).

Here, the only remaining issues are whether the Respondent is admissible to the United States for permanent residence; whether he qualifies for an exception or is eligible for a waiver; and whether he merits adjustment of status in the exercise of discretion.

The Court finds that the family unity exception applies for the Respondent's case as it pertains to his actions in association with his daughter's entry to the United States. INA §§ INA § 212(a)(6)(E)(i), 212(d)(11). The Respondent is an alien seeking adjustment of status as an immediate relative of the daughter whom he is charged to have encouraged, induced, assisted, abetted, or aided to enter the United States in violation of law. *Id.* Similarly, the Court also finds that the family unity exception applies relative to the Respondent's inadmissibility due to his membership in the CCP. INA § 212(a)(3)(D)(iv). For these reasons, the Court finds that the Respondent is not inadmissible from the United States and because he has satisfied the statutory requirements for adjustment of status, the Court finds he is statutorily eligible for adjustment of status under INA § 245(a).

The Court now turns to whether he has met his burden of establishing that he merits adjustment as a matter of discretion. See 8 C.F.R. § 1240.8(d). In making a discretionary determination, the Court must consider the totality of evidence, balancing positive equities against negative factors. See *Matter of Marin*, 16 I&N Dec. 581, 584–86 (BIA 1978); see also *Rashtabadi v. INS*, 23 F.3d 1562, 1570 (9th Cir. 1994) (noting that *Marin* “governs all decisions on whether to grant discretionary relief”). The underlying aim of this analysis is to determine whether the granting of relief would be in the best interests of the United States. *Ridore v. Holder*, 696 F.3d 907, 920 (9th Cir. 2012) (internal quotation marks omitted) (citing *Matter of C-V-T*, 22 I&N Dec. 7, 11 (BIA 1998)).

The Court does not find that the Respondent merits a favorable exercise of discretion. As discussed above, the Court found the Respondent incredible. The Department of State likewise found that the Respondent was engaged in alien smuggling due to his actions relating to his daughter. Exh. 2 at 21. The Court also finds that the Respondent failed to submit persuasive evidence that his actions, in association with the individuals he and his company sponsored and assisted in obtaining a visitor visa to the United States, did not or were not intended to violate the immigration laws of the United States – Liu Li, Mei Fan, Wenlu Zhai, Song Haibin. The Respondent admitted that he and his company assisted in getting these individuals visitor visas. These individuals are his employees in China. They knowingly and falsely indicated in their visa applications that they are travelling to the United States for pleasure and tourism. The Respondent admitted that these individuals worked for him while in the United States. Specifically, Mei Fan continued to work for his United States companies, Liu Li worked as his interpreter and two individuals worked as the bodyguard and driver for the Respondent including picking up his son from school. When asked why he was having the company's employees work for him while they are in the United States contrary to their visitor visas, his only explanation was he has so many investments that he can't do it by himself. The record would compel a conclusion that he was engaged in a pattern of circumventing the United States' immigration laws to get individuals obtain visitor visas while intending for these individuals to work for him in the United States. Additionally, the Respondent was also confronted with the fact that these individuals brought cash to the United States for the Respondent, and his explanation was the money was a gift to him

ignoring the fact that the employees stated to the immigration officers that they are bringing the money on behalf of the Respondent. Exh. 2 at 12-14.

As positive factors, the Respondent has been living in the United States since 2018. The Respondent is an elderly person; he has substantial ties in the United States having a United Citizen daughter and grandchildren as well as owning several properties in Hawaii. The Respondent has constantly reminded the Court that he has made significant donations to public schools in the United States, has made contributions to the society in regard to his businesses and payment of taxes, the democracy wall he built in the family's cemetery and the proposed 32-unit housing project in Hawaii. Additionally, the Respondent has no criminal history.

However, after much deliberation, the Court finds that the positive factors are not sufficient to tip the balance in his favor. *See Marin*, 16 I&N Dec. at 584–85 (noting that the Court “must balance the adverse factors evidencing a[] [respondent’s] undesirability as a permanent resident with the social and humane considerations presented in his or her behalf . . .”). The Court does not reach this decision lightly as the Court is sensitive to the fact that he is 79 years old and suffers from a list of medical issues. However, his circumvention and continued disregard of our immigration laws suggest that it will not be in the best interest of the United States to grant the Respondent adjustment of status. Additionally, as the Respondent has more than sufficient means, there is a significant likelihood that the Respondent can obtain medical treatment in China and anywhere in the world. The Respondent’s qualifying relative – his daughter – is an adult, married individual and does not rely on the Respondent for support. She is married to a well-employed individual who can sufficiently support her and their daughters based on the sponsorship documents submitted.

To be clear, wealth and an investor’s status does not allow an individual to bypass our legal requirements or to be favorably treated. The ideal that the United States is a land of justice, freedom, and equality, where the law applies equally regardless of wealth, is a foundational principle, largely anchored in the 14th Amendment's Equal Protection Clause. This concept is symbolized by "Equal Justice Under Law," which is carved into the Supreme Court building. The Court is particularly troubled by the Respondent’s disregard to our laws and by the fact that the Respondent used his Chinese company and wealth to bring Chinese individuals to the United States under the guise of tourism but in fact intended for these individuals to work for him in the United States. Our laws provide for mechanisms for companies to bring employees to the country, but the Respondent completely disregarded this and instead manipulated our laws to his benefit by sponsoring for these individuals to come visit the United States as visitors. Similarly, he brought his son to the United States on a B2 visa even though he had enrolled him to a school in the United States disregarding the country’s requirements for a student visa. What is worse, the Respondent has not taken accountability for his actions and instead continued to maintain that he has not smuggled anyone in the country. And when the law was applied to his case, he cried injustice. The Court therefore considers the Respondent’s denial of responsibility for his actions as evidence of a lack of rehabilitation and as a further negative factor in its discretionary analysis. *C.f. Matter of Arreguin*, 21 I&N Dec. 38, 40 (BIA 1995) (holding that acceptance of responsibility is a sign of rehabilitation).

C. Asylum under INA § 208

1. One year Bar

The Court denies Respondent's asylum application because it was untimely filed. *See* INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(ii) ("The 1-year period shall be calculated from the date of the [noncitizen's] last arrival in the United States or April 1, 1997, whichever is later."). The Respondent last entered the United States on January 3, 2020. He filed his asylum application on September 8, 2025. The Respondent's only explanation for not pursuing asylum from 2020 to 2025 was that he did not know about it and only filed it after the Court brought up the asylum relief to his attention. In his Form I-589, he indicated that his pending I-485 adjustment of status was an extraordinary circumstance that prevented him from filing within the one-year period but did not submit statutory or case law to support his claim. Exh. 16 at 11. Neither of his explanations satisfy any of the exceptions to the one-year bar. *See* INA § 208(a)(2)(D); 8 C.F.R. § 1208.4(a)(2)(i)(B). Accordingly, the Respondent's application for asylum is denied.

D. Withholding of Removal under INA § 241(b)(3)

The Respondent also seeks withholding of removal under INA § 241(b)(3). To meet the burden of proof for withholding of removal, a respondent must establish a "clear probability" that his life or freedom will be threatened if returned to his home country on account of his race, religion, nationality, membership in a particular social group, or political opinion by the government or forces that the government is unable or unwilling to control. *See* INA § 241(b)(3)(A); 8 C.F.R. § 1208.16(b); *see also Barajas-Romero v. Lynch*, 846 F.3d 351, 356 (9th Cir. 2017); *Tamang v. Holder*, 598 F.3d 1083, 1091 (9th Cir. 2010); *Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1092 (9th Cir. 2005). To meet the "clear probability" standard, he must prove that it is "more likely than not" he will be persecuted. *Tamang*, 598 F.3d at 1091. The "clear probability" standard required for withholding of removal is stricter than the "well-founded fear" standard for asylum. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 430–31 (1987); *Chen v. Ashcroft*, 362 F.3d 611, 617 (9th Cir. 2004). A respondent may demonstrate this likelihood (1) by establishing a presumption of future persecution based on past persecution, or (2) through an independent showing of a clear probability of future persecution. 8 C.F.R. §§ 1208.16(b)(1)–(2); *INS v. Stevic*, 467 U.S. 407, 429–30 (1984).

1. No Past Persecution; No Harm Rising to the Level of Persecution

Persecution is usually characterized as severe, sustained, and "marked by the infliction of suffering or harm . . . in a way regarded as offensive." *Halim v. Holder*, 590 F.3d 971, 975 (9th Cir. 2009) (quoting *Li v. Ashcroft*, 356 F.3d 1153, 1158 (9th Cir. 2004) (en banc)). Various forms of physical violence, including rape, torture, assault, and beatings, constitute persecution. *See Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). In evaluating whether past harm rises to the level of persecution, the Court considers the harm cumulatively. *Id.*

Because it is an extreme concept, persecution "does not include every sort of treatment our society regards as offensive." *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995) (citation omitted); *see also Al-Safer v. INS*, 268 F.3d 1143, 1146 (9th Cir. 2001), amended 355 F.3d 1140

(9th Cir. 2004). Simply stated, “not all negative treatment equates with persecution.” *Lanza v. Ashcroft*, 389 F.3d 917, 934 (9th Cir. 2004). In *Sharma*, the court identified seven non-exhaustive factors, to be considered cumulatively, relevant to the court’s review of the agency’s determination that past harm failed to rise to the level of persecution. *Sharma v. Garland*, 9 F.4th 1052, 1063 (9th Cir. 2021). Persecution generally does not include harassment or “mere discrimination, as offensive as it may be.” *Fisher v. INS*, 79 F.3d 955, 962 (9th Cir. 1996); *see also Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 (9th Cir. 2003). Fear of general conditions of violence within a country is not persecution, nor is general economic deprivation. *See Gormley v. Ashcroft*, 364 F.3d 1172, 1178 (9th Cir. 2004); *Acosta*, 19 I&N Dec. at 222.

Considering the totality of the circumstances of the Respondent’s case, this Court finds that Respondent’s harms did not rise to the level of persecution. The Respondent claims persecution from the Chinese government, specifically, that the CCP repeatedly investigated him and his company for tax evasion. There is no evidence in the record that the tax evasion investigation is routinely used by the CCP to punish and persecute enterprises in China. The Respondent’s claim simply does not make sense. The Respondent and his witness testified that the CCP sends a party secretary to a successful company to manage and supervise the company for the party. He claimed that he was made a party secretary after he refused to work with the individual sent by the CCP. Thus, the CCP would be investigating its own member if it subjects a managed company to an investigation. More importantly, the Respondent claimed that the investigation did not yield tax evasion charges against him and his company.

The Court also finds that the destruction of the democracy wall he had ordered built in China, the millions of RMB he suffered due to the loss in value of his company’s stocks, and his claims of involuntary membership to the CCP do not amount of persecution under current Ninth Circuit case law. On the other hand, the Chinese government had allowed the Respondent’s company to operate in China despite his non-payment of party dues and despite the construction of the democracy wall. There is also no evidence that his business was shut down by the Chinese government. Additionally, absent a showing that the action of the Chinese government was for a nefarious purpose, the Court finds that the loss in the Respondent’s stock’s value was a normal, expected feature of a volatile market, driven by rapid price fluctuations that often represent temporary downturns rather than permanent capital loss. While unsettling, these periods of volatility are common—occurring frequently due to economic shifts—and historically provide buying opportunities, as market declines often precede long-term recoveries. The Respondent did not submit evidence that the tax evasion investigation and the decline in the stocks’ value were connected. The Respondent claimed that the price of his company’s stocks was driven down because of the suppression of policies by the CCP but other than this self-serving claim, the Respondent did not submit any evidence to support this claim. There is also no evidence in the record that the Respondent was forced to join the CCP. The Respondent’s witness – Kate Zhou - testified that in China, a successful enterprise can join the CCP or it can refuse to join the party referred to as “wearing a red hat”. The Respondent testified that he threatened to quit if they do not remove the party secretary from his company and so the CCP made him the party secretary. Both testimonies support the conclusion that the Respondent’s CCP membership was not involuntary and that the Respondent joined the CCP to benefit himself and his company. Thus, the Respondent did not establish that he experienced past economic persecution in China. *Ahmed v. Gonzales*, 467 F.3d 669, 673 (7th Cir, 2006) (“Economic harm, too, may be persecution if it is

deliberately imposed as a form of punishment and it results in sufficiently severe deprivations.”). The Respondent has not alleged that the Chinese government or the CCP targeted his company after he had the democracy wall erected and after he submitted his request to withdraw from the party. On the other hand, the Respondent’s witness, Kate Zhou, testified that one of the benefits to being a CCP member is leniency from the party. As such, despite the democracy wall, the Respondent was not prosecuted or targeted by the Chinese government. The Respondent also claimed that the democracy wall was violently destroyed but his documentary evidence does not support this incredible claim. The pictures submitted do not suggest violence or destruction when individuals were dismantling the wall. The Respondent also did not submit corroborating evidence to support his incredible claim that his father was labeled as a counterrevolutionary and an American spy. He claimed his family was subjected to discrimination and persecution because of his father’s political background, but he did not provide evidence and sufficient details of this alleged persecution. Instead, the record shows that he thrived and became very successful and wealthy under the CCP’s rule in China. Finally, he claimed that his son was murdered in a car accident, but he did not submit any evidence to support this claim. On the other hand, his declaration indicates that he had agreed to have his son’s remains cremated, and when he later requested to have a case filed for his suspicion of homicide, he was refused because his son was already cremated. Exh. 16 at 19. Accordingly, Respondent has not met his burden to show past persecution. *See* 8 C.F.R. § 1208.16(b).

a. On account of a protected ground - Not political opinion; No Nexus

The Respondent must demonstrate that a protected ground was “a reason” he was persecuted. *See Garcia*, 988 F.3d at 1146; *Barajas-Romero*, 846 F.3d at 360. The Respondent asserts that the harm he suffered was on account of his political opinion. Exh. 16. As stated above, the Respondent provided no evidence demonstrating that the CCP took over his company and did so because of his political activities or opinion against the CCP. He claimed that he was opposed to the CCP but the record does not support this claim. Based on his evidence, the inscription on the democracy wall included a statement of hope, not a criticism – “[o]n the occasion of the 60th anniversary of the founding of the People’s Republic of China, I look forward to the arrival of democratic constitutionalism which could bring us a peaceful future.” Political opinion encompasses more than electoral politics or formal political ideology or action. *Ahmed v. Keisler*, 504 F.3d 1183, 1192 (9th Cir. 2007). The record is not clear as to what the Respondent’s political view is. He claimed he was outspoken and spoke for justice, however, other than the democracy wall he had ordered built on his company grounds, there is nothing in the record to support this claim. There is also no evidence in the record to show that the CCP believed that the Respondent had an anti-CCP or anti-corruption political opinion. The record would show that the Respondent was successful in his business and that because of the success of his company, the CCP sent a committee secretary to his company. The Respondent testified that he hosted the party when they visit, he paid his dues. Finally, the record also would show that as a response to the Respondent’s demand, the CCP made him party secretary, and he was able to continue expanding his company and grow his wealth. The record therefore does not support conclusion that his political opinion was a reason he was persecuted in China.

2. Well-Founded Fear of Future Persecution

Because the Respondent has not made out a claim for past persecution in China, he is not entitled to a presumption that he has a well-founded fear of future persecution. *See* 8 C. F.R. § 1208.13; *Singh v. Whitaker*, 914 F.3d at 659. Nor has the Respondent established a well-founded fear of persecution independent of any past harm. *See Ahmed*, 504 F.3d at 1191; 8 C.F.R. § 1208.13(b). To begin, based on the Court's findings that the Respondent has not testified credibly – or alternatively, that he has not overcome the Court's doubts about the credibility of the testimony with persuasive evidence – he has not established that his claim is either subjectively genuine or objectively reasonable. More specifically, the Respondent has not met his burden of proof that he is targeted by the Chinese government because of his political opinion. A respondent may not “simply prove that there exists a generalized or random possibility of persecution in his native country; he must show that he is at particular risk—that his predicament is appreciably different from the dangers faced by his fellow citizens.” *Kotasz v. INS*, 31 F.3d 847, 852 (9th Cir. 1994) (internal citations omitted).

The Respondent's fear is based on his own general statements. The Respondent has never been subjected to arrests, detention, house arrest or imprisonment. The Respondent did not have an individualized risk of future threat to his life or liberty, and as such, the Court finds he failed to demonstrate that his life or liberty would be threatened based on a protected ground. A well-founded fear must be subjectively genuine and objectively reasonable. *See Parada*, 902 F.3d at 909; *Rusak v. Holder*, 734 F.3d 894, 896 (9th Cir. 2013); *Ahmed v. Keisler*, 504 F.3d 1183, 1191 (9th Cir. 2007); *Montecino v. INS*, 915 F.2d 518, 520-21 (9th Cir. 1990) (noting the importance of the applicant's subjective state of mind). The Respondent feared that he will be subjected again to investigation and prosecution for tax evasion if returned to China. However, the possibility that the authorities could pursue him who may ultimately be innocent, as the Respondent claimed he was, the length of the investigation or prosecution by the authorities, or the unsavoriness of their tactics, does not suffice to give rise to an inference of persecution on account of a protected ground, absent a showing that there was no legitimate reason for the prosecution under the law. *Ratnam v. INS*, 154 F.3d 990, 995 (9th Cir. 1998) (internal quotation marks omitted) (“if there is no evidence of a legitimate prosecutorial purpose for a government's harassment of a person ... there arises a presumption that the motive for harassment is political.”); *Singh v. Gonzales*, 439 F.3d 1100, 1112 (9th Cir. 2006) (“[W]here there is evidence of legitimate prosecutorial purpose, foreign authorities enjoy much latitude in vigorously enforcing their laws.”); *Dinu v. Ashcroft*, 372 F.3d 1041, 1044-45 (9th Cir. 2004) (finding that the length of time of the investigation, heavy-handed and inconsistent tactics, or the innocence of the suspect, were nevertheless directed at the legitimate goal of finding evidence of crime rather than the illegitimate one of harassing a political opponent.”)). Here, other than his self-serving claim, the evidence did not demonstrate that the CCP or the Chinese government's investigation and prosecution of the Respondent for tax evasion were baseless and administered for a nefarious purpose. Significantly, the Chinese government otherwise respected the process and the rule of law by conducting an investigation and concluding the investigation with no tax evasion finding rather than simply seizing the Respondent's company and assets. Furthermore, the Respondent's persecutors appeared to lose interest in him. Following his request, the CCP party accepted his withdrawal and issued a formal notice of his withdrawal from the party.

Turning to the objective evidence in the record, the numerous country report do not support a finding that Respondent faces any risk that is appreciably different from the violence faced by the general population of China. *See Kotasz*, 31 F.3d at 852; *see generally* Exh.30. Nothing in the report, or any of Respondent's other evidence, demonstrate that Respondent is at particular risk of harm upon return to China. The Respondent has not provided persuasive argument and evidence as to why he will be harmed if returned to China. Undoubtedly, there is some repression in China. Exh. 20 at 39 ([t]he government, CCP, and their agents continued to use violence and threats of violence against individuals outside the country for political purposes, including to repress dissent.); Exh. 20 at 9 ([c]itizens often avoided discussing political matters, leaders, or "sensitive" topics for fear of official punishment. Authorities routinely took harsh action against citizens who questioned the legitimacy of the CCP or criticized General Secretary Xi.). However, the Respondent has not provided evidence that he was an active political critic and continues to be a known political critic and activist or that he is similarly situated to the activists that were arrested in China. The Court weighs the persuasiveness of the country report evidence in light of the whole record. *Singh v. Holder*, 753 F. 3d at 837. While the country conditions report demonstrates that the Chinese authorities' engaged in efforts to surveil and suppress political activism, the report does not refer to the particular incidents of persecution underpinning the Respondent's claim. In fact, at the April 28, 2026 hearing, the Immigration Judge confronted the Respondent regarding his letter to the President of the United States where the Respondent stated:

"I request relevant departments of the Trump administration to accept and respond within 48 hours. If I do not receive a reply, *I will have no choice but to request assistance from the Chinese Embassy in the United States.*" (emphasis added)

Exh. 53 at 9. This statement severely undercuts his claim of well-founded fear and clearly demonstrates that the Respondent is not a refugee. Therefore, they do not serve to corroborate the Respondent's claim of fear of persecution.

The Court incorporates its credibility and burden of proof findings. *See* Part IV, A, *supra*. There is also no evidence in the record that the Respondent regularly and actively engages in activities that criticize the Chinese government here in the United States to face the same risk as those referenced in the country reports and articles if returned to China. The only pro-democracy work that the Respondent has made in the United States is the recreation of the "democracy wall" at the Respondent's family cemetery. Again, the inscription on the wall hopes about democracy of symbolic pictures past presidents, of the bible and the United States Constitution. Exh. 47 at 6. It also included words from "Changyi" hoping for democracy and the end of the cycle of violence in China. The Court does not find that these are expressions that the Chinese government would perceive as anti-Chinese government political activism. Rather, the record reflects that the Respondent's priority, in China and here in the United States, was his business where he established six limited liability companies and owning several real estates in Hawaii. There is no evidence of political activism by the Respondent such that he is at clear risk of encountering the Chinese authorities and, thus, does not possess the individualized risk required under the law.

E. Protections Under the Convention Against Torture (CAT)

The Court also finds that the Respondent is eligible for CAT protection. As discussed extensively above, the Respondent's testimony is not credible. *See* Part IV.A., *supra*. The Respondent has not provided reliable evidence of any instance of past torture inflicted upon him. The Court is mindful that asylum and withholding of removal are analytically separate from protection under CAT, and notes that "[a]n adverse credibility determination is not necessarily a death knell to CAT protection." *Shrestha*, 590 F.3d at 1048; *see Garcia v. Holder*, 749 F.3d 785, 791 (9th Cir. 2014) ("An adverse credibility determination does not, by itself, necessarily defeat a CAT claim . . ."); *Kamalthas v. INS*, 251 F.3d 1279, 1283 (9th Cir. 2001) (holding that "claims for relief under [CAT] are analytically separate from claims for asylum. . ."). However, the Respondent's "claims under the CAT are based on the same statements . . . the [Court has] determined to be not credible." *See Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003). The Court found that the Respondent was not credible regarding the instances of harm he faced in China from government officials.

Even assuming *arguendo* that the Respondent had testified credibly, the Court would still find the Respondent remains ineligible for withholding of removal and deferral of removal under CAT because he has not demonstrated that he is more likely than not to suffer torture. *See* 8 C.F.R. § 1208.16(c)(3) (stating that all evidence relevant to the possibility of future torture must be considered). The Court finds that the Respondent's corroborating evidence is unpersuasive and insufficient to demonstrate the circumstances and events that allegedly occurred in China, or to show that it is more likely than not that the Respondent would experience harm rising to the level of torture if returned to China. First, there is no evidence that the Respondent was previously subjected to torture in China. *See* 8 C.F.R. § 208.18(a)(2) ("Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture."); *Nuru v. Gonzales*, 404 F.3d 1207, 1217 (9th Cir. 2005) ("Past torture is the first factor we consider in evaluating the likelihood of future torture because past conduct frequently tells us much about how an individual or a government will behave in the future."). The Respondent's claims that his company's stocks prices driven down or that his funds are held in CCP banks do not amount to "an extreme form of cruel and inhuman treatment." *Lopez v. Sessions*, 901 F.3d 1071, 1078 (9th Cir. 2018); *see Al-Saher v. INS*, 268 F.3d 1143, 1146–47 (9th Cir. 2001) (defining torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" and is "an extreme form of cruel and inhuman treatment" (quoting 8 C.F.R. § 208.18(a)(2))); *see also Guo v. Sessions*, 897 F.3d 1208, 1217 (9th Cir. 2018) (stating that the concept of torture "is more severe than persecution") (internal citation omitted). The Court also does not find that such economic harm, while distressing and unfortunate, falls within the definition of torture. *See* Part IV.B., *supra*.

Moreover, based on the testimonial and documentary evidence provided and considering all sources of possible torture, the Court finds that the Respondent has not demonstrated that he would more likely than not be tortured by or with the consent or acquiescence of a public official if returned to China. *See* 8 C.F.R. § 1208.16(c)(3) (stating that all evidence relevant to the possibility of future torture must be considered). To begin, the Court acknowledges the validity of the country conditions report in the record and the report does not indicate that the Chinese government strictly regulate enterprises other than those that are found to violate labor laws. Exh.

20 at 25 (Companies that violated wage, hour, and OSH regulations faced various penalties, including suspension of business operations, rescission of business certificates and licenses, or entry onto publicly available "blacklists" maintained by local governments.); *id.* at 36 (The law specified administrative review, fines, and revocation of business licenses as possible sanctions against enterprises that illegally hired children.). These documents alone do not demonstrate that it is more likely than not that the Respondent would be specifically targeted for torture in China. *See Dhital v. Mukasey*, 532 F.3d 1044, 1051 (9th Cir. 2008) (holding that a respondent applying for relief pursuant to CAT must show that he would be subject to a "particularized" threat of torture).

Even if the Court credits the Respondent's testimony that he faces the risk of persecution, the record lacks any evidence that the Chinese government, or private actors that the government is unable or unwilling to control, is interested in pursuing or torturing him. The Respondent had regularly traveled in and out of China with no issue, he was able to obtain passport several times. Most significantly, the Respondent traveled to China as recent as 2019-2020. The Respondent's testimony that he will face harm upon returning to China is undermined by the fact that the Chinese government permitted the Respondent to leave the country with no consequence. In light of the absence of any threats or communication from the Chinese government, the Court is left unpersuaded that the Respondent faces a more likely than not chance of torture.

In sum, considering the Respondent's incredible testimony and the limited documentary evidence presented, the Court finds Respondent has not shown that it is more likely than not he would face a particularized threat of torture based on his religion, political opinion, race or nationality. As the Respondent has not suffered any extreme and inhuman treatment in China, the Court finds that the Respondent did not suffer any harm that amounted to torture. *See De Leon Lopez v. Garland*, 51 F.4th 992, 1004 (9th Cir. 2022). The Court incorporates its discussion on past persecution and well-founded fear above. *See* Part IV.C.1 and 2, *supra*. *See Ratnam v. INS*, 154 F.3d 990, 996 (9th Cir. 1998) ("Torture in the absence of any legitimate criminal prosecution, conducted at least in part on account of political opinion, provides a proper basis for asylum and withholding of deportation even if the torture served intelligence gathering purposes."). Because Respondent has not demonstrated that it is more likely than not that he would be tortured if he returns to Russia, he has failed to meet his burden of proof under the CAT. *See* 8 C.F.R. § 1208.16(c)(2); *Kamalhas*, 251 F.3d at 1283.

F. Discretion

Statutory eligibility for asylum, whether based on past persecution or a well-founded fear of future persecution, does not necessarily compel a grant of asylum. *Cardoza-Fonseca*, 480 U.S. at 441. An applicant for asylum must also establish that they warrant a favorable exercise of the Court's discretion. *See* INA § 240(c)(4)(A). In exercising discretion, the Court examines the totality of the circumstances. *Matter of Pula*, 19 I&N Dec. 467, 473 (BIA 1987), *superseded by statute on other grounds as recognized by Andriasian v. INS*, 180 F.3d 1033 (9th Cir. 1999); *see, e.g., Zuh v. Mukasey*, 547 F.3d 504, 511 (4th Cir. 2008) (providing a noncomprehensive list of discretionary factors). As with the Court's finding in his adjustment of status application, the Court does not find that the Respondent merits a favorable exercise of discretion. The Court incorporates its adverse credibility and discretionary findings. *See* Parts IV. A. and B, *supra*.

G. POST-CONCLUSION VOLUNTARY DEPARTURE

While the Respondent did not specifically request this relief, the Court considered voluntary departure. It is not necessary that the respondent requests the relief at the first master calendar hearing. *Matter of Arguelles*, 22 I&N Dec. 811, 811–12 (BIA 1999). The Court weighed the relevant adverse and positive factors, including the Respondent's age, prior immigration history; criminal history, if any; length of his residence in the United States; and extent of his family and societal ties in the United States. The record would support a finding that the Respondent is eligible for post-conclusion voluntary departure, and thus, the Court will allow the Respondent to voluntarily depart the United States under safeguards in lieu of removal. INA § 240B(b).

Accordingly, the following orders shall be entered:

ORDERS

IT IS HEREBY ORDERED that the Respondent's application for adjustment of status under INA § 245(a) be **DENIED**.

IT IS FURTHER ORDERED that the Respondent's application for asylum under INA § 208 be **DENIED**.

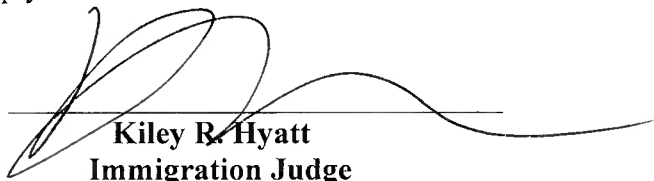
IT IS FURTHER ORDERED that the Respondent's application for withholding of removal under INA § 241(b)(3) be **DENIED**.

IT IS FURTHER ORDERED that the Respondent's application for protections under Article 3 of the Convention Against Torture be **DENIED**.

IT IS FURTHER ORDERED that voluntary departure under INA § 240B(b) be **GRANTED**, without expense to the Government, in lieu of removal. The Respondent must depart by _____. It is further ordered that the Respondent post a voluntary departure bond in the amount of \$500.00 USD with the Department within five business days of this order. Failure to post the bond as required or to depart by the required date will result in an alternate order of removal to China taking effect immediately. If the Respondent fails to voluntarily depart within the time specified or any extensions granted by the Department, the Respondent shall be subject to a civil monetary penalty as provided by relevant statute, regulation, and policy. See INA § 240B(d)(1). If the Respondent fails to voluntarily depart within the time specified, the alternate order of removal shall automatically take effect, and the Respondent shall be ineligible, for a period of 10 years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act, to include cancellation of removal, adjustment of status, registry, or change of nonimmigrant status. *Id.* If the Respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary

departure is automatically terminated upon the filing of such a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply.

DATE: 3 June 2020


Kiley R. Hyatt
Immigration Judge

APPEAL RIGHTS: Both Parties have the right to appeal the decision in this case. Any appeal is due at the Board of Immigration Appeals within thirty (30) calendar days of service of this decision. 8 C.F.R. § 1003.38. Departure from the United States subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken. 8 C.F.R. § 1003.4.