

***The Credible Liar: Why consistency is the wrong benchmark
for credibility in asylum cases.***

By Martin R. Robles-Avila

The California Psychologist, September/October, 2009

Full Reference List

1. Not everybody is eligible for asylum. For example, applicants who fail to apply within one year of entering the United States are ineligible for asylum, as are certain individuals with disqualifying convictions. These individuals may, however, be eligible for so-called “withholding of removal” or protection under the U.N. Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. These latter forms of protection prevent removal to the country of origin—where the individual fears persecution—but they do not lead to lawful permanent residence.
2. Under 8 U.S.C. §1158(b)(1)(B)(ii), the applicant may satisfy his burden of demonstrating he or she is a refugee through his testimony alone without corroboration provided the “testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.”
3. *See, e.g., Gulla v. Gonzales*, 498 F.3d 911, 916 (9th Cir. 2007) (“Absent an explicit adverse credibility finding, a witness’s testimony must be accepted as true.”); *Kataria v. INS*, 232 F.3d 1107, 1114 (9th Cir. 2000) (“In the absence of an explicit adverse credibility finding, we must assume that Kataria’s factual contentions are true.”).
4. 8 C.F.R. §1208.13(b)(1). *See also* 8 C.F.R. §1208.16(b)(1)(i) (same presumption for withholding of removal).
5. *See* 8 C.F.R. §1003.1(d)(3)(i) (“Facts determined by the immigration judge, including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous.”), (setting aside its institutional bias against aliens) and the Ninth Circuit. *See, e.g., Ochoa v. Gonzales*, 406 F.3d 1166, 1169 (9th Cir. 2005) (“Factual findings made by the BIA are reviewed under the deferential substantial evidence standard and will be upheld unless the evidence compels a contrary result.”).
6. In pre-REAL ID Act cases, “[m]inor inconsistencies in the record that do not relate to the basis of an applicant’s alleged fear of persecution, go to the heart of the asylum claim, or reveal anything about an asylum applicant’s fear for his safety are insufficient to support an adverse credibility finding.” *Mendoza Manimbao v. Ashcroft*, 329 F.3d 655, 660 (9th Cir. 2003).
7. *Immigration Courts Make Do With Limited Resources Despite Mounting Caseloads*, Center For Investigation Reporting, June 30, 2009.
8. *See Sexualized Violence Against Women and Children: A Psychology and Law Perspective*, Ed., Cling, B.J., The Guilford Press, 2004.
9. *Closing the credibility gap: The prosecutorial use of expert witness testimony in sexual assault cases*, Ellison, Louise, *The International Journal of Evidence & Proof* (2005).
10. *See, e.g., Herlihy, Jane, Scragg, Peter, Turner, Stuart*, “Discrepancies in autobiographical memories—implications for the assessment of asylum seekers: repeated interviews study,” *BMJ*, February 9, 2002 (“The assumption that inconsistency of recall means that accounts have poor credibility is questionable. Discrepancies are likely to occur in repeated interviews. For refugees showing symptoms of high levels of post-traumatic stress, the length of the application process may also affect the number of discrepancies. Recall of details rated by the interviewee as peripheral to the

account is more likely to be inconsistent than recall of details that are central to the account. Thus, such inconsistencies should not be relied on as indicating a lack of credibility.”). In *Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers*, Juliet Cohen challenges the general hypothesis that “changes in a story indicate falsehood,” noting that this “has never been conclusively proven to be so. . . Current research on memory shows that stories can change for many reasons and such changes do not necessarily indicate that the narrator is lying.” International Journal of Refugee Law, Vol. 13, No. 3, Oxford University Press, 2002. “In the real world,” she continues, “we know that the most rigidly reproduced accounts may be so because they have been memorized from a script. Conversely, those with certain discrepancies may be so because they have been genuinely reconstructed from autobiographical memories. Yet we encourage consistency in all testimony.” Id.

11. *Clemente-Giron v. Holder*, 556 F.3d 658, 663 (8th Cir. 2009).
12. *Ibid*, at page 666.