

**FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

YI QUAN CHEN,
Petitioner,

No. 00-70478

v.

I&NS No.
A77-234-212

IMMIGRATION AND NATURALIZATION
SERVICE,
Respondent.

OPINION

Petition to Review a Decision of the
Board of Immigration Appeals

Argued and Submitted

12840

12841

12842

COUNSEL

Jonathan M. Volyn and David Young, Legal Interns, and Maureen E. Laflin and Monica Schurtman, Supervising Attorneys, University of Idaho College of Law, Legal Aid Clinic, Moscow, Idaho, for the petitioner.

John J. Andre, Senior Litigation Counsel, United States Department of Justice, Civil Division, Washington, D.C., for the respondent.

OPINION

LAY, Circuit Judge:

This is an appeal from denial by the Board of Immigration Appeals ("BIA") of a Chinese citizen's application for asylum and withholding of removal pursuant to § 208(a) and § 241(b)(3) of the Immigration and Nationality Act ("I.N.A."), 8 U.S.C. §§ 1158(a), 1231(b)(3). We reverse and find the Petitioner is eligible for a discretionary grant of asylum, as well as a mandatory grant of withholding of removal.

I. Facts

Yi Quan Chen ("Chen") is a twenty-five year old citizen of the People's Republic of China ("China"). On October 5, 1994, Chen married Ai-Ling Jiang ("Jiang") in an informal ceremony. The marriage was not recognized by the Chinese government because they were not of legal marrying age. As a result, they could not obtain a permit to have children.

In February 1995, Jiang learned she was pregnant. When they went to the clinic for a pre-natal examination, family planning officials attempted to detain the Chens because they could not provide a marriage certificate, which is required to obtain a birth permit. The couple escaped and went to stay with relatives to hide from the officials. Family planning officials continued to search for them.

his second application and submitted documentary evidence, including letters from family members and neighbors, as well as a family planning department notice requiring Chen's wife to appear for an abortion. Chen also submitted corroborating evidence of conditions in China, demonstrating how people who violate China's government policies, including its marriage and family planning laws, are continually repressed. An IJ conducted a hearing on the merits and concluded that Chen had not presented credible evidence in support of his second application. The IJ also held that Chen had submitted a frivolous asylum claim.

Chen appealed the denial to the BIA, which dismissed his appeal in a split decision. Contrary to the IJ, the BIA determined that Chen's claim was not frivolous. However, the BIA agreed with the IJ's conclusion that Chen lacked credibility and on that basis, denied his petition for asylum and withhold-

contrary." I.N.A. § 242(b)(4)(B), 8 U.S.C. § 1252(b)(4)(B) (Supp. II 1996). Although the substantial evidence standard for reviewing credibility findings by the BIA is deferential, the BIA must have a " `legitimate articulable basis to question the petitioner's credibility, and must offer a specific, cogent reason for any stated disbelief.' "

well-founded fear of future persecution, and the clear probability that he would be persecuted if returned to China.

B. Credibility

1. Counterfeit Birth Certificates

Chen explains that he based his first asylum application on

the residence of his wife and son were credible and consistent

credibly established he was persecuted in the past, we also find that his fear of future persecution is well-founded, offering an alternative ground upon which his petition for relief may be granted.

Having established past persecution, Chen is entitled to a presumption that his fear of future persecution is well-founded. Notwithstanding this presumption, we also find that Chen meets the subjective and objective elements of proving his well-founded fear. Chen credibly testified that he Oigeenat

IV. Conclusion

Our finding that Chen has credibly demonstrated his eligibility for relief does not automatically entitle him to asylum. Once a refugee is determined to be a refugee, he is entitled to asylum.