

# Evidentiary Issues: Assessing Evidentiary Weight Circuit Court Case Law Summaries

## Table of Contents

### **I. General Issues**

First Circuit .....	3
Second Circuit.....	8
Third Circuit.....	12
Fourth Circuit.....	18
Fifth Circuit.....	21
Sixth Circuit .....	22
Seventh Circuit.....	23
Eighth Circuit.....	24
Ninth Circuit .....	26
Tenth Circuit .....	28
Eleventh Circuit .....	29

### **II. Government Reports**

First Circuit .....	30
Second Circuit.....	34
Third Circuit.....	36
Fourth Circuit.....	38
Fifth Circuit.....	40
Sixth Circuit .....	40
Seventh Circuit.....	40
Eighth Circuit.....	42
Ninth Circuit .....	43
Tenth Circuit .....	45
Eleventh Circuit .....	46

### **III. Affidavits or Personal Statements**

First Circuit .....	48
Second Circuit.....	49
Third Circuit.....	51
Fourth Circuit.....	52
Fifth Circuit.....	53
Sixth Circuit .....	53

Seventh Circuit.....54  
Eighth Circuit.....55  
Ninth Circuit .....56  
Tenth Circuit.....57  
Eleventh Circuit .....58

## I. In General

### First Circuit

*Hernandez-Lima v. Lynch*, 836 F.3d 109 (1st Cir. 2016)

The Board affirmed the IJ's denial of withholding of removal, finding the alien failed to establish past persecution or a clear probability of future persecution on account of a protected ground. *Id.* at 112. Specifically, the IJ found that the alien had not shown sufficient harm from the threats received from political opponents or the motive for the shooting which took place while he was driving. *Id.* The court denied the petition for review finding that the "total dearth of evidence" that the threats caused any non-physical harm or suffering, weighed against the evidence that evidence that they were empty threats that were not fulfilled, supported the Board's decision. *Id.* at 114. The court stated that infliction of harm is not required to show that threats rise to the level of persecution but rather that the absence of physical harm weighs against such a finding. *Id.* The court further said that such a determination is never dispositive but may be determinative where "it substantially outweighs any countervailing evidence of nonphysical harm or suffering" noting that reasonable fact-finders may differ in the amount of weight each assigns to the absence of physical harm in a given case. *Id.*

*Acosta v. Lynch*, 819 F.3d 519 (1st Cir. 2016).

The IJ found that the alien had not established that he was lawfully present in the United States following an admission and was therefore ineligible for adjustment of status under section 245(a) of the INA. *Id.* at 523-24. The alien testified that he entered the United States, at age 13 years, with a valid visa and was admitted to the United States after arriving from Colombia by plane. *Id.* at 521-22. Supporting his testimony regarding the arrangements for the visa and his flight were affidavits from his father and uncle, and a favorable polygraph examination. *Id.* DHS provided two expert witnesses, one an enforcement officer from CBP and the other a forensics document examiner. *Id.* at 522. The enforcement officer testified that the visa number was valid but was associated with another person and that the visa appeared to have been "washed" so that the alien's information could be placed on it. *Id.* at 523. The forensics examiner testified that the admission stamps on the Form I-94 and the alien's passport were counterfeit and that the visa, while genuine, had been altered or "washed." *Id.* The IJ found the alien not credible after noting that the alien's testimony was corroborated by affidavits and declining to give any weight to the polygraph evidence. *Id.* The IJ found the DHS's evidence more persuasive and found that the alien had not met his burden of proof to show that he had been inspected and admitted. *Id.* The Board affirmed the IJ's decision and found that the IJ had the discretion to give no weight to the polygraph evidence. *Id.* The court denied the petition for review and agreed that an IJ has broad discretion, including the weight to be given to evidence. *Id.* at 525-26. The court stated that polygraph evidence has "long been considered of dubious value" and that the IJ did not err in declining to give it "any significance in his weighing of the evidence. *Id.* at 526.

*Aatieh v. Riordan*, 797 F.3d 135 (1st Cir. 2015)

The alien sought adjustment of status based upon his marriage to a United States citizen. *Id.* at 136. The CIS denied the I-130 petition finding that his prior marriage to his United States citizen cousin was designed to evade the immigration laws. *Id.* at 137. The Board upheld that decision concluding that the alien had not established that his first marriage was bona fide. *Id.* The alien's wife filed a second I-130 on his behalf which was also denied. *Id.* The alien argued that the affidavits from his ex-wife, her parents, and his parents should have been given greater weight. *Id.* at 140. The court denied the petition for review and stated that weighing of evidence is "within wide limits, the exclusive province of the agency" and that those limits had not been exceeded. *Id.*

*Marsadu v. Holder*, 748 F.3d 55 (1st Cir. 2014)

The Board denied the aliens' untimely motion to reopen, finding that they did not establish a change in country conditions or circumstances in Indonesia that was material to their claims for asylum based on their Christian faith. *Id.* at 57. The court denied the aliens' petition for review, rejecting an argument that the BIA erred in weighing and characterizing the evidence of changed country conditions. The First Circuit noted that, contrary to the aliens' arguments, the Board did consider a report from the aliens' expert on politics and economics in Southeast Asia; however, the Board acted within its discretion when it concluded that, notwithstanding the expert's "take on the matter," the aliens did not show an intensification or deterioration of country conditions. *Id.* at 59 (internal quotation marks and citations omitted).

*Shul-Navarro v. Holder*, 762 F.3d 146 (1st Cir. 2014)

The Board affirmed the IJ's denial of the alien's application for Temporary Protected Status (TPS). *Id.* at 146. The First Circuit vacated the Board's decision, finding that the Board and the IJ did not adequately explain why they found that the alien did not submit sufficient evidence to show that he was in the United States prior to May 2001. *Id.* at 150-52. The court criticized the Board and IJ for not discussing a letter from a neighborhood health center, dated September 19, 2000, which appeared to contradict the finding regarding the alien's presence in the United States. *Id.* at 150-51. The First Circuit stated that the Board and IJ were required to provide an explanation for their reasoning if they had decided to consciously disregard the letter. *Id.* at 151. The court further held that the IJ's reservations about the alien's own credibility did not provide a sufficient basis for discounting the reliability of the letter, which was sent directly by the health center. *Id.* at 151. Finally, the First Circuit noted that neither the Board nor the IJ had raised any doubts about the letter's authenticity. *Id.* at 151-52.

*Simarmata v. Holder*, 752 F.3d 79 (1st Cir. 2014)

The Board denied the alien's untimely motion to reopen removal proceedings, in which he claimed changed country conditions for Christians in Indonesia. *Id.* at 80. The First Circuit denied the alien's petition for review, finding that the Board did not err in granting diminished weight to the alien's principal evidence, an affidavit from a professor who specializes in comparative and international political economy, labor, and human rights in Indonesia. *Id.* at 81. The court held

that it was not an abuse of discretion for the Board to conclude that the affidavit did not provide an assessment of the particular or individualized risk of harm to the alien. *Id.*

*Yong Xiu Lin v. Holder*, 754 F.3d 9 (1st Cir. 2014)

The Board denied the alien's second motion to reopen removal proceedings, which was based on changed country conditions. *Id.* at 10-11. The First Circuit dismissed the alien's petition for review, finding that the Board did not err in granting diminished weight to her documentary evidence from China. *Id.* at 15-16. The court noted that the alien made no attempt to authenticate her documents by any means. *Id.* at 15. This was especially significant because an IJ had previously found that the alien had submitted false documents in support of an asylum application. *Id.* The First Circuit reaffirmed its prior case law holding that an adverse credibility finding can inform the evidentiary weight given to unauthenticated documents in a later, related proceeding. *Id.*

*Telyatitskiy v. Holder*, 628 F.3d 628 (1st Cir. 2011)

The Board denied the alien's motion to reconsider a previous decision affirming the IJ's denial of the alien's request for relief under the Convention Against Torture. *Id.* at 629-30. The First Circuit rejected (for two reasons) the alien's argument that the IJ failed to entirely consider the "record evidence of police brutality against Jews in Ukraine." *Id.* at 631. First, the court found that the alien's argument was "little more than a thinly disguised claim concerning evidentiary weight," which the court was statutorily barred from reviewing. *Id.* at 631. Second, even if reviewable, the First Circuit rejected the alien's argument because the record demonstrated that the IJ did consider the totality of the evidence presented. *Id.* (citations omitted).

*Le Bin Zhu v. Holder*, 622 F.3d 87 (1st Cir. 2010)

The First Circuit denied the alien's petition for review, through which the alien challenged the Board's denial of his motion to reopen based on a claim of changed country conditions in China. *Id.* at 89. The court found that the Board carefully considered all of the evidence and provided a clear explanation for its denial. *Id.* at 92. Furthermore, the Board was not required to grant full evidentiary weight to an unauthenticated village committee notice submitted by the alien. *Id.* at 92 ("It is well within the BIA's discretion to find that lack of authentication undermines the evidentiary weight of a document. . . . This is especially the case when . . . the BIA's decision to do so is supported by an adverse credibility finding.") (citations omitted). The court also found that the Board was permitted to give less evidentiary weight to a letter allegedly sent by the alien's mother on the grounds that the letter was unsubstantiated and self-serving. *Id.*

*Makalo v. Holder*, 612 F.3d 93 (1st Cir. 2010)

The Board affirmed the IJ's denial of an application for asylum, withholding of removal, and protection under the Convention Against Torture that was filed by a native and citizen of Gambia. The First Circuit rejected the alien's argument that the IJ should not have discounted his documentary evidence as unreliable. The court found that the IJ had valid reasons for doubting the documents' authenticity. *Id.* at 95-96 (noting that a State Department report indicated that

“Gambian asylum applicants had forged documents to improve their applications,” and that the alien did not “provide accessible evidence to buttress his claims”). The First Circuit also agreed with the IJ’s negative assessment of the alien’s documentary evidence. *Id.* (noting that two purportedly official documents were handwritten and contained errors or unusual information). The court found that the IJ did not err in giving no weight to newspaper articles submitted by the alien that “appeared designed to buttress his application.” *Id.* (noting that one of the articles was in a different font than the rest of the newspaper).

*Kartasheva v. Holder*, 582 F.3d 96 (1st Cir. 2009)

The Board affirmed the IJ’s decision, denying an application for asylum, withholding of removal, and protection under the Convention Against Torture that was filed by the alien, a native of the Soviet Union and a citizen of Uzbekistan. In vacating the Board’s order, the First Circuit took issue with the IJ’s consideration of the alien’s documentary evidence. *Id.* at 107-08. Specifically, the court held that the IJ should not have dismissed a medical history report (which confirmed that the alien was beaten) on the grounds that the report “did not explain who had beaten her.” *Id.* at 107. The court also held that the IJ erred in his assessment of the letters submitted by the alien’s friends and daughters. *Id.* at 107-08. Whereas the IJ found that the letters did not establish a link between the alien’s arrests and her involvement with a human rights organization in Uzbekistan, the court found that the letters did provide some corroboration for issues relevant to the alien’s claim that her arrests were politically motivated. *Id.*

*Chhay v. Mukasey*, 540 F.3d 1 (1st Cir. 2008)

The Board affirmed the IJ’s denial of an application for protection under the Convention Against Torture filed by a Cambodian national. *Id.* at 4. The First Circuit denied the alien’s petition for review, rejecting a claim that the IJ accorded insufficient weight to evidence of general country conditions. *Id.* at 8. The court noted that the IJ made references to evidence of country conditions in his decision, indicating that he had considered such background evidence. *Id.* (adding, “[T]he mere fact that the IJ put weight on certain factors and reached a conclusion contrary to the petitioner’s interests does not constitute a due process violation.”).

*Zeru v. Gonzales*, 503 F.3d 59 (1st Cir. 2007)

The aliens (natives and citizens of Eritrea) challenged the Board’s affirmance of the denial of their asylum applications, as well as the Board’s subsequent denial of a motion to reopen. *Id.* at 62. The First Circuit denied the petition for review. In the context of the motion to reopen, the aliens argued that the Board improperly discounted their new evidence regarding the female respondent’s Post-Traumatic Stress Disorder (PTSD), which they claimed explained certain issues involving her credibility before the IJ. *Id.* at 73. The court found, however, that the Board did consider the evidence relevant to the female alien’s medical issues and symptoms. *Id.* at 73-74 (“There may be cases in which the failure by an IJ or the BIA to give due consideration to expert evidence regarding PTSD justifies dislodging a decision of the Board. . . . [T]his is not such a case.”). Moreover, the IJ recognized the fact that trauma victims may give discrepant testimony; however, that did not preclude the IJ from also articulating a view that this did not explain certain discrepancies in the female alien’s testimony. *Id.* at 73.

*Rodriguez del Carmen v. Gonzales*, 441 F.3d 41 (1st Cir. 2006)

The Board affirmed the IJ’s finding that the alien had entered into a fraudulent marriage. *Id.* at 43. The First Circuit affirmed the Board’s decision, stating that the IJ was not required to credit the alien’s evidence of the bona fides of his marriage—including “his love letters to [his wife], life insurance policies naming her as his beneficiary, and their joint tax returns”—because the “IJ reasonably could conclude that the documentary evidence . . . constitute[d] deliberate contrivances to conceal the fraudulent nature of the [alien’s] marriage for the exclusive purpose of evading the immigration laws.” *Id.* at 44.

*Mukamusoni v. Ashcroft*, 390 F.3d 110 (1st Cir. 2004)

The Board dismissed an appeal from the IJ’s denial of an application for asylum, withholding of removal, and protection under the Convention Against Torture that was filed by the alien, a native of Uganda who had citizenship in Uganda and Rwanda. *Id.* at 113. The First Circuit vacated the Board’s order, finding that the Board did not consider material evidence. Specifically, the court held that the Board gave insufficient weight to a report that was prepared by a psychologist who evaluated the alien. *Id.* at 122-23. The court noted that the psychologist provided 25 pages of notes and evaluations, which were replete with corroborative information. *Id.* The First Circuit cited specific examples from the psychologist’s evaluation that corroborated aspects of the alien’s claim—such as the psychologist’s notations concerning physical evidence of ulcers the alien developed in prison. *Id.* The Board also “did not discuss” other corroborative evidence, such the alien’s Ugandan passport, her Rwandan identity card, her student identity card, and airline documents confirming that the alien’s luggage had been lost. *Id.* at 123. Finally, the First Circuit criticized the Board for making no mention of the background and country conditions evidence submitted by the alien. *Id.* at 123-24. The court held that it was unreasonable for the Board to ignore such evidence without providing an explanation for its decision to do so. *Id.*

*Fergiste v. INS*, 138 F.3d 14 (1st Cir. 1998)

The Board affirmed the IJ’s decision that denied the alien’s application for asylum and withholding of deportation to Haiti. *Id.* at 16. The First Circuit reversed the Board’s decision and remanded the case. Among other issues, the court found that the Board erred by concluding that changes in general country conditions in Haiti were sufficient to show that the alien’s fear of harm was no longer reasonable. *Id.* at 19 (stating, “Abstract ‘changed country conditions,’ do not automatically trump the specific evidence presented by the applicant.”) (citations omitted). The First Circuit noted that the alien “presented hundreds of pages of documentary evidence that either contradicted the Board’s conclusions or placed them into question. Yet the Board mentioned none [of the alien’s documents] in its analysis.” *Id.*

*Gailius v. INS*, 147 F.3d 34 (1st Cir. 1998)

The Board affirmed the IJ’s denial of an application for asylum and withholding of deportation that was filed by a native of Lithuania. *Id.* at 36. The First Circuit vacated the Board’s decision and remanded the case for further proceedings, finding that the IJ did not make necessary findings

regarding (among other things) the authenticity of certain threatening letters that the alien submitted. *Id.* at 36-37. Without such findings, the First Circuit held that it could not determine whether the alien's evidence of "specific danger to [himself]" outweighed the evidence of general changes in country conditions. *Id.* The court also held that the IJ could not reject the alien's testimony as not credible based on general country conditions because the alien's testimony appeared to be corroborated by specific documentary evidence, which had not been found to be not genuine. *Id.* at 45-46.

## **Second Circuit**

*Boluk v. Holder*, 642 F.3d 297 (2d Cir. 2011)

The Board affirmed the IJ's denial of a hardship waiver, finding that the alien did not establish that his marriage was entered into in good faith. *Id.* at 299, 300-01. The Second Circuit denied the alien's petition for review, holding that it lacked jurisdiction to consider the agency's factual determinations in this context and, therefore, the court could not reevaluate the relative strength of the evidence presented to the IJ. *Id.* at 304. The Second Circuit specifically stated that it lacked jurisdiction to consider an allegation that the IJ failed to give any weight to the fact that the alien's wife had travelled to Turkey to marry him. *Id.*

*Contreras-Salinas v. Holder*, 585 F.3d 710 (2d Cir. 2009)

The Board affirmed the IJ's denial of a request for a good-faith marriage waiver. *Id.* at 711. The Second Circuit dismissed the alien's petition for review, finding that she had not raised any issues over which the court had jurisdiction. Specifically, the court held that it lacked jurisdiction to consider the alien's argument that the IJ had failed to weigh material evidence showing that her marriage was entered into in good faith. *Id.* at 714. In this regard, the Second Circuit noted that the governing statute explicitly committed determinations as to the weight of the evidence to the sole discretion of the executive branch. *Id.* at 713-14.

*Mendez v. Holder*, 566 F.3d 316 (2d Cir. 2009)

The Board summarily affirmed the IJ's denial of cancellation of removal on the grounds that the alien did not establish that his removal to Mexico would result in exceptional and extremely unusual hardship to his children. *Id.* at 317. The Second Circuit granted the alien's petition for review, finding that the IJ overlooked or mischaracterized material evidence on the hardship issue. *See id.* at 322-23. The court specifically criticized the IJ for finding that there was "nothing in the record" indicating that the alien's daughter's asthma was severe. *Id.* (noting that the alien's testimony indicated that his daughter's asthma was particularly serious). The Second Circuit also found that the IJ did not adequately address the evidence relevant to the alien's son's Grade II Vesicoureteral Reflux condition. *Id.* at 323.

*Shunfu Li v. Mukasey*, 529 F.3d 141 (2d Cir. 2008)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 143. The Second Circuit granted the alien's petition for review,



finding several errors in the IJ's decision. Among other issues, the IJ had granted no weight to a group of purportedly official documents because the documents had not been authenticated under the regulations. *Id.* at 149. The Second Circuit held that the IJ erred in finding that she was required to reject the evidence on this basis. *Id.* According to the court, the IJ should have assessed the authenticity of the documents based on the totality of the evidence before deciding the weight given to such documents. *Id.*

*Zhi Yun Gao v. Mukasey*, 508 F.3d 86 (2d Cir. 2007)

The Board denied the alien's motion to reopen. *Id.* at 86. In support of the motion, the alien had submitted a family planning leaflet from his native province in China and the State Department's Country Report. *Id.* at 86. The Second Circuit granted the alien's petition for review, finding that the Board's decision did not indicate whether it had considered the alien's documents at all. *Id.* at 88. The court stated that the Board is not required to expressly parse or refute each piece of evidence submitted by an alien; however, the Board must show that it has considered any evidence that materially bears on the alien's claim. *Id.* at 87-88.

*Gui Yin Liu v. INS*, 508 F.3d 716 (2d Cir. 2007)

The Board affirmed without opinion the IJ's denial of asylum on the grounds that the application was not timely filed. *Id.* at 718-19. The IJ had discounted a purported police record from China, which, according to the alien, demonstrated that he had not entered the United States more than 1 year before filing his asylum application. *See id.* The Second Circuit dismissed the alien's petition for review of the asylum decision, finding that the IJ gave several persuasive reasons for determining that the police report was not probative. *Id.* at 722 (noting that the report was not contemporaneously produced with the alien's departure from China and that the report did not affirmatively state that the alien was in China on the date in question). Although the petition for review of the asylum denial was dismissed, the alien's petition for review was granted on unrelated grounds. *See id.* at 723-24.

*Siewe v. Gonzales*, 480 F.3d 160 (2d Cir. 2007)

The Board affirmed without opinion the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 162. The Second Circuit denied the alien's petition for review, finding that the IJ permissibly discounted the alien's testimony and other evidence as not credible. *Id.* at 167-71. The court held that the IJ did not err in inferring that an arrest warrant submitted by the alien was inauthentic because the IJ's conclusion rested on the following facts: (1) the apparent condition of the warrant in the alien's photocopy did not match the alien's description of the original; (2) the warrant contained unexplained factual errors; (3) the warrant contained implausible information; and (4) the alien's explanation of how he left his native country with the warrant was implausible. *Id.* at 169.

*Biao Yang v. Gonzales*, 496 F.3d 268 (2d Cir. 2007)

The Second Circuit consolidated the cases of two Chinese nationals. *Id.* at 270. In each case, the Board had affirmed an IJ's denial of asylum, withholding of removal, and protection under the

Convention Against Torture based largely on an adverse credibility finding. *Id.* Also in each case, the Board had affirmed a conclusion that the asylum application was frivolous. *Id.* The Second Circuit denied the aliens' petitions for review with respect to the adverse credibility findings, but vacated the frivolousness findings. *Id.* at 279. In its consideration of one of the adverse credibility determinations, the court indicated that it was permissible for the IJ to accord little weight to a letter attesting to the alien's church membership (in New York) in light of the fact that the alien did not present a witness to confirm the letter's contents. *Id.* at 273 (noting that the IJ warned the alien of this prior to the hearing). Similarly, the court indicated that it was permissible for the IJ to accord no weight to an affidavit from the alien's cousin because the alien did not call his cousin as a witness (even though the cousin resided in New Jersey). *Id.*

*Yi Long Yang v. Gonzales*, 478 F.3d 133 (2d Cir. 2007)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 135. The Second Circuit granted the alien's petition for review, finding that the Board and IJ erred in evaluating the alien's evidence. *See id.* at 143. Specifically, the court noted that the IJ's adverse credibility determination rested almost exclusively on an incorrect presumption that the alien's attorney had acted competently. *Id.* The adverse credibility finding was based on inconsistencies between the alien's testimony and the asylum application. *Id.* The Second Circuit held that the IJ, in assessing the significance of any inconsistencies between the application and the alien's testimony, should have considered the fact that the attorney who prepared the application had been disbarred. *Id.*

*Diallo v. Gonzales*, 445 F.3d 624 (2d Cir. 2006)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 626. The Second Circuit denied the alien's petition for review, rejecting several different arguments related to the IJ's adverse credibility determination. *See id.* Among other issues, the IJ had noted that there were discrepancies between the alien's asylum interview and her courtroom testimony. *Id.* The court held that the IJ did not accord undue weight to the asylum interview. *See id.* at 631-33. The Second Circuit commented that the IJ must consider the reliability of an asylum interview before using it to discredit an alien's testimony; however, the need to examine the reliability of the asylum interview is not as significant as the need to examine the reliability of an airport interview. *Id.* at 631-32 (discussing the factors that may make an airport interview materially less reliable); *see also Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004).

*Li Zu Guan v. INS*, 453 F.3d 129 (2d Cir. 2006)

The Board summarily affirmed the IJ's denial of asylum and withholding of removal, which was based on an adverse credibility finding. *Id.* at 131. The Second Circuit granted the alien's petition for review, finding that the IJ's decision rested on several errors, including: (1) The IJ discounted a photograph of the alien with his wife, deeming it to be a composite photograph because it appeared in both the alien's marriage certificate (issued in 1989) and a "notarial" marriage certificate (issued in 1998). *Id.* at 138-39. The Second Circuit held that the mere fact that the photograph appeared in both documents did not support the inference that it was a composite. *Id.*

(noting, moreover, that the alien had submitted an additional photograph of himself with his wife, undercutting the significance of the IJ's finding); and (2) The Second Circuit found that the IJ erred in discounting an x-ray submitted by the alien on the grounds that it contained the same photograph of the alien's wife as was included in her notarial birth certificate. *Id.* at 140 (noting that the IJ gave no reason for determining that authentic documents would necessarily contain unique photographs).

*Zhen Nan Lin v. U.S. Dep't of Justice*, 459 F.3d 255 (2d Cir. 2006)

The Board reversed the IJ's grant of asylum. *Id.* at 258. The Second Circuit granted the alien's petition for review, finding that the Board erred in discounting the alien's testimony as not credible. The Board's decision was based on a finding that the alien had submitted a fraudulent document — a finding which was based on a report from the United States Consulate in Guangzhou, China, stating that a document submitted by the alien was a forgery. *Id.* at 268. The court found that the consular report was unreliable and, therefore, should have not have been given much weight by the Board. *Id.* at 269-70. In this regard, the Second Circuit noted: (1) the report was based entirely on the opinions of Chinese officials, who appeared to have incentives to be less than candid; (2) the Chinese government was known to deny engaging in the type of persecution alleged by the alien; (3) the consular report was not sufficiently detailed to support its own conclusions; and (4) the report contained multiple hearsay. *Id.* at 269-72.

*Wei Guang Wang v. Board of Immigration Appeals*, 437 F.3d 270 (2d Cir. 2006)

The Board denied the alien's untimely motion to reopen on the grounds that he had not established changed country conditions in China. *Id.* at 272. The Second Circuit denied the alien's petition for review, finding that the Board adequately considered the evidence of changed country conditions. *Id.* at 274-75. The court noted that there were three pieces of evidence before the Board: (1) an affidavit from Dr. Guang Wu, detailing alleged incidents of forced sterilization in China; (2) an affidavit from Dr. John S. Aird, discussing China's Family Planning Law; and (3) the State Department's 2004 Country Report. *Id.* at 274. The Second Circuit noted that the Board's consideration of the evidence was brief. *Id.* at 275. However, the court did not find that the Board failed to consider the alien's evidence. *See id.* The court stated that, given the evidence before the Board and the conclusion it reached, it was clear that the Board had considered and rejected the alien's evidence. *Id.*

*Yan Chen v. Gonzales*, 417 F.3d 268 (2d Cir. 2005)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 269. The Second Circuit granted the alien's petition for review, finding that the Board did not consider relevant evidence submitted by the alien. *Id.* Specifically, the court criticized the Board for not considering a country conditions report submitted by the alien. *Id.* at 272. The court noted that the Board is permitted to reasonably discount evidence; however the Board may not simply overlook evidence. *Id.* at 272, 275.

*Ramsameachire v. Ashcroft*, 357 F.3d 169 (2d Cir. 2004)

The Board affirmed the IJ's denial of asylum, which was based on a finding that the alien's testimony was not credible because it was inconsistent with the alien's airport interview. *Id.* at 176-77. The Second Circuit denied the alien's petition for review. The court held that, although airport statements are in some circumstances unreliable, the Board may consider them in assessing the weight given to an alien's in-court testimony. *Id.* at 175. The Second Circuit provided a list of factors that the Board must consider before deeming an airport interview to be sufficiently reliable to be used in assessing the alien's credibility: (1) whether the statement is a verbatim account of the alien's statement, as opposed to a mere summary or paraphrase; (2) whether the questions asked of the alien were designed to elicit the details of an asylum claim and whether the interviewing officer asked follow-up questions to aid the alien in developing his or her account; (3) whether any history of prior interrogations or coercive experiences may have caused the alien to be hesitant to reveal information to the interviewing officer; and (4) whether the alien was able to understand the translations provided by an interpreter. *Id.* at 179-80. In this case, the court held that the Board properly considered the dangers inherent in relying upon an airport interview before including it as part of the evidentiary record. *See id.* at 181.

*Abankwah v. INS*, 185 F.3d 18 (2d Cir. 1999)

The Board affirmed the IJ's denial of asylum and withholding of deportation based upon a finding that the alien's fear of being subjected to female genital mutilation in Ghana was not objectively reasonable. *Id.* at 21. The Second Circuit granted the alien's petition for review. The alien had submitted an affidavit and testimony from a witness as to the likelihood that she would be persecuted if returned to Ghana; however, the Board had discounted such evidence because the witness did not establish sufficient knowledge about the alien's particular tribe and circumstances. *See id.* at 24. The court held that the Board was too exacting in the degree of specificity that it required. *Id.* at 25-26. Therefore, the Second Circuit held that the witness's testimony and affidavit were given too little weight by the Board. *See id.*

### **Third Circuit**

*Mendoza-Ordonez v. Att'y Gen. U.S.*, 869 F.3d 164 (3d Cir. 2017)

The IJ denied the alien's withholding application finding that, although he had testified credibly to receiving death threats due to his political opinion, he had not established that the Honduran government was unable or unwilling to protect him. *Id.* at 167. The IJ also found that the alien could safely relocate in Honduras. *Id.* The Board dismissed his appeal. *Id.* at 168. The alien argued in his petition for review that the Board erred when it analyzed his argument that the IJ ignored key evidence. *Id.* at 169. The court found that the Board should have examined whether the IJ reviewed and weighed the evidence of record, including country reports, and if the Board found that the IJ had ignored the country reports then it should have determined whether this erred undermined the factual findings regarding the Honduran government's ability and willingness to protect the alien. *Id.* The court found that the Board erred by instead applying the legal standard for a motion to remand or reopen, which required an examination as to whether the reports were significant enough to warrant consideration as new evidence, despite already being in the record,

and whether the reports warranted reopening of proceedings. *Id.* The court ultimately granted the petition for review after finding that the alien warranted being granted withholding of removal. *Id.* at 174.

*Fei Yan Zhu v. Att’y Gen. U.S.*, 744 F.3d 268 (3d Cir. 2014)

The Board denied the alien’s third motion to reopen, concluding that she did not establish a material change in country conditions in China that would affect her eligibility for asylum, withholding of removal, or protection under the Convention Against Torture. *Id.* at 271. The court determined that the Board did not meaningfully address much of the alien’s evidence and, therefore, the court remanded the case to the Board for further explanation of its decision. *Id.* at 279. In support of her motion, the alien had submitted “more than 85 documents, spanning over 1,000 pages” to the Board. *Id.* at 272. The court held that it was unable to review the Board’s weighing of the documents from the alien’s hometown because the Board did not specifically discuss the documents. *Id.* at 274-75 (noting that it could not be certain whether the documents were discounted for lack of authentication, relevance, or some other reason). The court further held that the Board did not explain its decision not to consider the evidence from other areas within the alien’s home province. *Id.* at 275-76. However, the Third Circuit explicitly did not disturb the Board’s decision to reject an expert opinion that the alien offered to authenticate some of her foreign documents because, unlike the other evidence the Board discounted, the Board did explain why it declined to rely on the expert’s opinion. *Id.* at 276-77. Finally, the court held that the Board’s treatment of the country reports was conclusory. *Id.* at 277-78.

*Green v. Att’y Gen. of the U.S.*, 694 F.3d 503 (3d Cir. 2012)

The Board affirmed the IJ’s denial of deferral under the Convention Against Torture. *Id.* at 506. The Third Circuit dismissed the alien’s petition for review, affirming the agency’s determination that the alien did not establish that the Jamaican government would consent to or acquiesce in any violence carried out against him by a criminal gang. *Id.* at 508-09. Before the Third Circuit, the alien did not establish that the IJ overlooked or ignored relevant evidence on this issue. *Id.* (noting that the IJ addressed the alien’s testimony and the country reports of the Department of State). The court held that it lacked jurisdiction to consider whether the IJ correctly weighed the evidence because this was a factual determination related to the alien’s criminal conviction and application for relief, and the alien fell within a category of aliens described in the jurisdiction-stripping provision of section 242(a)(2)(C) of the Act. *Id.* at 506, 508.

*Ying Chen v. Att’y Gen. of the U.S.*, 676 F.3d 112 (3d Cir. 2011)

The Board affirmed the IJ’s denial of a motion to reopen to re-apply for asylum. *Id.* at 113-14. The Board also affirmed the IJ’s rejection of a letter that one of the respondents’ mothers had allegedly obtained from a local village committee, indicating that the respondent would be sterilized upon return to China. *Id.* (noting that the IJ rejected the letter for lack of authentication). The Third Circuit affirmed the Board’s decision. *See id.* at 115-18. The court noted that the IJ cited reports of the State Department and the Law Library of Congress, refuting the co-respondent’s claim that their American-born children would be considered Chinese nationals upon

return. *Id.* at 116. The court further held that the IJ properly discounted the village committee letter because it had not been authenticated by any means. *Id.* at 117.

*Pieschacon-Villegas v. Att’y Gen. of the U.S.*, 671 F.3d 303 (3d Cir. 2011)

The Board dismissed the alien’s appeal from the IJ’s denial of deferral of removal under the Convention Against Torture. *Id.* at 305. The Third Circuit granted the alien’s petition for review because, although the Board referenced the country reports in its decision, the Board’s decision did not indicate that it had considered the extent to which those reports demonstrated that government officials in Colombia were involved in civil rights violations or paramilitary atrocities. *Id.* at 313-14. The court noted that the Board has discretion to deny a claim for relief despite relevant evidence; however, the Board does not have the authority to ignore relevant evidence. *Id.* at 314.

*Yusupov v. Att’y Gen. of the U.S.*, 650 F.3d 968 (3d Cir. 2011)

This case involved two aliens whose petitions for review were consolidated by the Third Circuit. *Id.* at 972. The Board had determined that each of the aliens (who were the subjects of extradition requests from the government of Uzbekistan) was a danger to national security and thus ineligible for withholding of removal. *Id.* (noting that the Board nonetheless granted the aliens deferral of removal under the Convention Against Torture). The Third Circuit granted the aliens’ petitions for review and directed the Board to grant the aliens’ applications for withholding of removal. *Id.* at 993. The Third Circuit found that the principal basis for the Board’s dangerousness holding arose from the extradition requests and related Interpol warrants that were issued by the Uzbek government. *Id.* at 982. The court found that the Board’s reliance on this evidence was problematic because the Board did not disturb the IJs’ determinations that the extradition requests and Interpol warrants were politically motivated. *Id.* The Third Circuit then reviewed the other evidence relied upon by the Board — including computer materials and circumstantial evidence — and found that the evidence did not support the Board’s ultimate conclusions because the aliens’ computers did not demonstrate that the aliens were linked to violent extremism, and the other evidence was similarly inconclusive. *Id.* at 985-92.

*En Hui Huang v. Att’y Gen. of the U.S.*, 620 F.3d 372 (3d Cir. 2010)

The Board reversed the IJ’s grant of asylum. *Id.* at 375-76. The Third Circuit vacated the Board’s order, finding that the Board did not address the alien’s evidence that, if credited, would support a grant of relief. *Id.* at 388-89. The court stated that the Board is not required to discuss each piece of evidence submitted by an applicant for asylum; however, it may not ignore evidence favorable to the alien’s claim. *Id.* In this case, the Third Circuit held that the Board did little more than “cherry-pick” evidence to conclude that the alien’s asylum application lacked merit. *Id.* The court held that the Board is required to perform a full review of the record, rather than a selective review. *Id.*

*Jinyu Kang v. Att’y Gen. of the United States*, 611 F.3d 157 (3d Cir. 2010)

The Board reversed the IJ’s grant of protection under the Convention Against Torture. *Id.* at 160. The Third Circuit granted the alien’s petition for review, finding that the evidence compelled the conclusion that it was more likely than not that the alien would be tortured if returned to China. *Id.* at 160-61. The court noted that the Board’s decision referred only to the testimony of one of the alien’s witnesses and the Department of State Country Report, completely ignoring the rest of the record. *Id.* at 163. Because the Third Circuit found that the Board did not provide any explanation for its apparent decision to ignore the alien’s other evidence, the court gave the Board’s decision no deference. *Id.* at 165.

*Cospito v. Att’y Gen. of the United States*, 539 F.3d 166 (3d Cir. 2008)

The Board affirmed the IJ’s denial of a request for waivers of inadmissibility under sections 212(h) and 212(i) of the Act. *Id.* at 168. The Third Circuit initially remanded the case to the Board to address issues related to collateral estoppel. *Id.* at 169. Following remanded proceedings — which did not result in a favorable outcome for the alien — the Third Circuit dismissed in part and denied in part the alien’s second petition for review. *Id.* at 169-70, 172. The court rejected the alien’s argument that the IJ ignored evidence of the hardship that his removal would cause his children. *Id.* at 170-71. The Third Circuit concluded that the alien’s substantive argument was that the IJ improperly weighed the evidence in making a factual finding, an issue over which the court lacked jurisdiction. *See id.*

*Jian Zhou Zheng v. Att’y Gen. of the U.S.*, 549 F.3d 260 (3d Cir. 2008)

In two separate cases, the Board dismissed an appeal from an IJ’s denial of asylum. *Id.* at 262. In each of the cases, the Board subsequently denied a motion to reopen removal proceedings. *Id.* The Third Circuit remanded each of the cases to the Board. In regards to Jian Zhou Zheng, the court noted that the Board did not discuss most of the evidentiary record. *Id.* at 268-89. The court stated that the Board should have demonstrated that it had considered the evidence, even if only to dismiss the evidence. *Id.* at 268. However, the Third Circuit held that the Board is not required to expressly parse or refute each piece of evidence on the record. *Id.* Regarding the other alien’s case, the Third Circuit held that the Board similarly did not refer to most of the alien’s evidence in its decision. *Id.* at 271. The court criticized the Board for making a series of conclusory statements. *Id.*

*Jarbough v. Att’y Gen. of the U.S.*, 483 F.3d 184 (3d Cir. 2007)

The Board affirmed the IJ’s finding that the alien (a native and citizen of Syria) did not establish that his failure to file an asylum application within the 1-year deadline was caused by extraordinary circumstances. *See id.* at 188. The Third Circuit denied in part and dismissed in part the alien’s petition for review. *Id.* at 193. Regarding the untimeliness of the alien’s asylum application, the court held that it lacked jurisdiction to consider the Board’s factual determinations on the issue of extraordinary circumstances. *Id.* at 189-90. The Third Circuit noted that its jurisdiction on this issue was limited to constitutional claims or questions of law, which did not include arguments that the IJ or Board improperly weighed the evidence. *Id.*

*Caushi v. Att’y Gen. of the U.S.*, 436 F.3d 220 (3d Cir. 2006)

The Third Circuit consolidated two petitions for review that were filed by the alien, a native and citizen of Albania. *Id.* at 221. In the first petition (which was granted by the Third Circuit), the alien challenged the Board’s denial of a motion to remand and dismissal of an appeal from the IJ’s denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* In the second petition (which was denied by the Third Circuit), the alien challenged the Board’s denial of a motion to reopen. *Id.* In regards to the first petition, the Third Circuit held that the IJ committed several evidentiary errors. *See id.* at 230-31. Among other issues, the court held that the IJ erred in largely discounting an affidavit that was submitted by a licensed pediatrician who examined the alien. *Id.* at 223, 227 (noting that the doctor observed permanent injuries on the alien that were consistent with his claim). Although the Third Circuit agreed with the IJ’s rejection of the doctor’s conclusions about the alien’s factual background, *id.* at 227 n.4, the court found that this did not necessarily undermine the credibility of her medical examination. *Id.* (noting that the medical report was corroborated by other evidence). The Third Circuit also held that the Government’s reliance on the State Department’s Profile of Asylum Claims for Albania was unpersuasive because the conclusions contained in that report were contradicted by the State Department’s Country Reports for 2000 and 2001, which the court has described as possibly the best resource on country conditions. *Id.* at 231 n.6 (citations omitted).

*Toure v. Att’y Gen. of the U.S.*, 443 F.3d 310 (3d Cir. 2006)

The Board affirmed the IJ’s denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 313. The Third Circuit granted the alien’s petition for review, rejecting multiple grounds for denial that were cited by the IJ. The court held that the IJ did not provide a clear reason for discounting or ignoring a newspaper article that may have corroborated the alien’s claim that his home in Cote d’Ivoire was invaded by uniformed men. *Id.* at 323-24. The Third Circuit noted that the IJ mentioned the article in her decision, but then discounted it because a letter from the United States Embassy stated that the article appeared to be from a newspaper in a territory controlled by an opposition party and, therefore, was potentially biased. *Id.* at 324 n.7. The court held that, notwithstanding the fact that the newspaper article may have been biased, the IJ should have more thoroughly addressed it. *Id.* (“Although we agree with the Government that the article is not conclusive proof of the ransacking because it is based largely on statements by [the alien], we nonetheless consider it to be an important piece of evidence.”).

*Toussaint v. Att’y Gen. of the U.S.*, 455 F.3d 409 (3d Cir. 2006)

The Board reversed the IJ’s grant of withholding of removal to Haiti and protection under the Convention Against Torture. *Id.* at 410-11. The Third Circuit affirmed the Board’s conclusion that the alien’s testimony was insufficient to establish that she would more likely than not be persecuted. *Id.* at 414-15. The court was satisfied with the Board’s review of the record because the Board’s reference to “insufficient evidence” indicated that it had considered and weighed the evidence before reaching its conclusion. *Id.* at 415. Regarding the alien’s CAT claim, the Third Circuit rejected an argument that the Board did not consider relevant evidence regarding the mistreatment of criminal deportees in Haiti. *Id.* at 416-17. Although the Board did not specifically



mention the country reports and documentary evidence concerning prison conditions in Haiti, the Third Circuit was satisfied that the Board's reference to "background evidence" demonstrated an acknowledgement and consideration of the documentary evidence. *Id.* at 417.

*He Chun Chen v. Ashcroft*, 376 F.3d 215 (3d Cir. 2004)

The Board dismissed an appeal from the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 217. The Third Circuit denied the alien's petition for review. The court held that the IJ did not place undue weight on the alien's "airport interview" in finding the alien not credible. *Id.* at 223-24. Although the Third Circuit had counseled in prior precedent against placing too much weight on airport interviews — particularly when the manner in which the interview was conducted was unknown — in this case, the alien's contradictory statements were significant and material to his claim. *Id.* Furthermore, the IJ cited to other discrepancies in the alien's testimony that led to the adverse credibility finding. *Id.* Although the Third Circuit denied the alien's petition for review, the court did find that the Board erroneously rejected some of the alien's evidence. *Id.* at 225-26. Specifically, the court held that the Board should not have rejected the validity of two "abortion certificates" merely because the State Department's Country Report may have generally undermined their validity. *Id.* (noting that the Third Circuit has previously questioned the Board's wholesale reliance on the country reports). However, the court did not find remand appropriate because the Board's rejection of the abortion certificates was separate and apart from the adverse credibility finding, which independently supported the Board's decision. *Id.* at 226.

*Dia v. Ashcroft*, 353 F.3d 228 (3d Cir. 2003)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 233-34. In a wide-ranging decision, the Third Circuit granted the alien's petition for review. *Id.* at 234. As to the alien's credibility, the court held that the IJ improperly rejected the alien's claims regarding his procurement of a passport and visa. *Id.* at 256-59. The court found that the IJ placed undue weight on an INS memorandum regarding the alien's "airport interview." *Id.* at 257-58 (noting that the Third Circuit is generally skeptical of reliance on reports of airport interviews). The Third Circuit also criticized the IJ for rejecting the testimony of the alien's expert witness, who testified regarding the signatures on the alien's passport and visa. *Id.* at 258. The Third Circuit held that the IJ's reasons for rejecting the expert's testimony were not supported by record evidence. *Id.* at 258-59.

*Ezeagwuna v. Ashcroft*, 325 F.3d 396 (3d Cir. 2003)

The Board affirmed the IJ's denial of asylum and withholding of deportation. *Id.* at 398. In its decision, the Board also denied the alien's motion to supplement the record. *Id.* The Third Circuit ultimately granted a petition for review (following a slightly atypical procedural history) and remanded the case to the Board. *See id.* In its decision, the court held that the Board violated the alien's right to due process by basing its decision almost entirely on a letter from a director in the Department of State's Office of Country Reports and Asylum Affairs. *Id.* at 405. The letter purported to relate to an investigation in Cameroon regarding the alien's alleged use of fraudulent documents. *Id.* at 398. The Third Circuit determined, however, that the letter did not meet its

standards of reliability and trustworthiness. *Id.* at 406. The court then listed the following four reasons for finding the letter unreliable: (1) the timing of the Government’s procurement of the letter was suspect; (2) the letter contained multiple hearsay; (3) it appeared that the former INS was “attempting to use the prestige of the State Department letterhead” to give credibility to the letter; and (4) the letter did not provide adequate information concerning the investigation that supported it. *Id.* at 407-08. Based on the foregoing, the Third Circuit held that the Board should not have granted the letter any weight. *See id.* at 408.

*Senathirajah v. INS*, 157 F.3d 210 (1998)

The Board affirmed the IJ’s denial of asylum and withholding of deportation. *Id.* at 211. The Third Circuit granted the alien’s petition for review, finding that the Board erred in affirming the IJ’s adverse credibility determination because, among other things, the IJ and Board gave too much weight to an affidavit that was prepared during an airport interview. *Id.* at 216-18. The court held that the Board should have considered the limitations of such interviews in assessing the significance of discrepancies between the interview and testimony. *Id.* at 218.

### **Fourth Circuit**

*Zavaleta-Policiano v. Sessions*, 873 F.3d 241 (4th Cir. 2017)

The IJ found that the alien had not shown that she was threatened due to her familial relationship to her father or political opinion and found that she had not established membership in a cognizable particular social group. *Id.* at 245-46. The Board affirmed the IJ’s decision, including the lack of nexus finding. *Id.* at 246. The Board characterized the gang’s actions as extortion and demands for money which were unrelated to the alien’s family ties. *Id.* at 248. The court found that the IJ and the Board failed to appreciate or address critical evidence. *Id.* It stated that the IJ failed to “address, or assign any weight to, the significant body of un rebutted, indeed, undisputed, probative evidence” regarding the threatening notes. *Id.* at 248. The court rejected the Government’s argument regarding the evidence and noted that it did not explain both the IJ’s and the Board’s “wholesale failure” to discuss the evidence. *Id.* at 249. The court found that the alien had established that her familial relationship to her father was at least one central reason for being targeted and threatened by the MS-13. *Id.* It then remanded the case for further proceedings. *Id.* at 250.

*Upatchas v. Sessions*, 849 F.3d 181 (4th Cir. 2017)

The IJ denied the alien’s application for a good faith marriage waiver under section 216(c)(4) of the INA because the alien was not credible and had presented insufficient evidence under the “totality of circumstances.” *Id.* at 183. The Board dismissed the appeal. *Id.* at 183-84. The court stated that it, and other circuit courts, have bifurcated the analysis of good faith marriage waivers with credibility and the weighing of evidence issues unreviewable as factual issues but whether the credited evidence deemed “weighty” by the agency meets the good faith standard is a reviewable legal question. *Id.* at 185-86. The court found that the Board did not apply the correct legal standard to the mixed question of fact and law to the good faith marriage analysis and remanded for further proceedings. *Id.* at 186-87.

*Ilunga v. Holder*, 777 F.3d 199 (4th Cir. 2014)

The Board affirmed the IJ's denial of asylum based largely on an adverse credibility finding. *Id.* at 206. The adverse credibility determination rested on several grounds, including questions about the reliability of documents that purportedly connected the alien to an opposition party in the Democratic Republic of the Congo. *Id.* at 204, 207. The Fourth Circuit granted the alien's petition for review. *Id.* at 207-13. In its rejection of each of the bases for the adverse credibility determination, the court held that the alien had provided a reasonable explanation for any apparent inconsistencies in the opposition-party documents. *Id.* at 211. The Fourth Circuit disagreed with the Board's position that it could not consider an explanation that was not presented to the IJ. *Id.* Accordingly, the court held that the agency improperly discounted the alien's opposition-party documents. *Id.* at 212. The court then held that, even if alien's testimony was found not credible, the IJ should have considered whether the documents (combined with other circumstantial evidence in the record) established that the alien had been persecuted on account of his political opinion. *Id.* at 213-14.

*Qing Hua Lin v. Holder*, 736 F.3d 343 (4th Cir. 2013)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 346. In its decision, the Board affirmed an adverse credibility determination that was based largely on inconsistencies between the alien's testimony and her prior statements in a Border Patrol interview. *See id.* at 351-53. The Fourth Circuit denied the alien's petition for review. The court joined several other circuits in holding that the Board should not rely, without qualification, on statements made in border interviews. *Id.* at 353. However, in this case, the court did not find error in the IJ's and Board's reliance on inconsistencies between the alien's testimony and her Border Patrol interview. *Id.* at 353. The court noted that the Border Patrol interview contained a major omission (the alien's allegation of a forced abortion) and her subsequent testimony regarding her marital status was not merely omitted in the border interview, but directly contradicted her prior statements. *Id.* at 353.

*Hui Pan v. Holder*, 737 F.3d 921 (4th Cir. 2013)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 926. The Fourth Circuit denied the alien's petition for review, affirming the IJ's findings that the alien was not credible and his corroborating documents were unauthenticated. *Id.* at 928-31. The court also affirmed the Board's conclusion that some of the alien's documents were inherently unreliable for reasons apart from authentication issues. *Id.* at 931. The Fourth Circuit cited favorably three examples of the Board explaining its reasoning: (1) a sterilization notice had little probative value because it was a photocopy of an unsigned document allegedly issued by local officials; (2) a disease explanation form had little probative value because it did not legibly identify the doctor who created it and it set forth a confusing and vague description of a medical condition; and (3) a surgery certificate was discounted because it conflicted with the alien's testimony. *Id.*

*Tassi v. Holder*, 660 F.3d 710 (4th Cir. 2011)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 713. The Fourth Circuit granted the alien's petition for review, finding several errors in the IJ's decision. First, the court held that the IJ incorrectly rejected significant aspects of testimony from an expert witness on the grounds that the witness was relying on hearsay. *Id.* at 721 (noting that the expert witness was not relying entirely on hearsay and, moreover, an expert witness is entitled to rely on hearsay if it is the type of factual information reasonably relied upon by other experts in a particular field). The Fourth Circuit then held that the IJ's discounting of two letters based on a finding that their authors did not disclose the source of their information was factually erroneous. *Id.* at 722. In regards to both the expert testimony and the two letters, the court held that the IJ erred in requiring that such evidence have its own corroboration. *Id.* at 722-23. The Fourth Circuit then held that the IJ erred in discrediting other evidence on the grounds that it lacked authentication under the regulations. *Id.* at 723 (noting that the alien was not given an opportunity to authenticate the evidence by other means). Finally, the court criticized the IJ for discounting certain pieces of evidence based on a misapprehension of its purpose. *Id.* at 723-24. The Fourth Circuit noted, for example, that the IJ discredited a letter because it did not reference the alien's past arrests; however, the letter had not been submitted to corroborate the alien's past persecution. *Id.*

*Anim v. Mukasey*, 535 F.3d 243 (4th Cir. 2008)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 248. The denial of asylum was based largely on the fact that the alien had submitted three convocations (summonses to appear) from Cameroon, but a letter from a Department of State official, based on an overseas investigation, stated that the convocations were fraudulent. *Id.* The Fourth Circuit granted the alien's petition for review, agreeing that the letter did not contain sufficient indicia of reliability and trustworthiness to support its use. *Id.* at 256-58. The court noted that the letter was comprised entirely of multiple hearsay statements. *Id.* at 257. Furthermore, the letter did not provide adequate information regarding the underlying investigation. *Id.* Finally, the Fourth Circuit held that it appeared that the IJ had over-relied on the prestige of the State Department in assessing the letter's reliability. *Id.* at 258 (stating, "General deference to the Department of State cannot substitute for an adequate evaluation of the reliability of a document, especially when the document . . . provides practically no information upon which a reliability determination can be made.").

*Chen Lin-Jian v. Gonzales*, 489 F.3d 182 (4th Cir. 2007)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 184. The Fourth Circuit granted the alien's petition for review as it related to his claims for asylum and withholding of removal. *Id.* The court agreed with the alien's argument that the IJ did not articulate a sufficient basis for discounting his evidence of past persecution. *Id.* at 191-92. Specifically, the Fourth Circuit noted that the IJ did not explain why an apparent discrepancy in the alien's individual Household Registration Card rendered the registration cards of his children unreliable. *Id.* at 192. Furthermore, the IJ did not address other

evidence submitted by the alien, such as his wife's pregnancy check-up cards and a family photograph. *Id.*

### **Fifth Circuit**

*Jin Yau Chen v. Holder*, 547 Fed. App'x 541 (5th Cir. Nov. 19, 2013) (unpublished)

The Board denied the alien's motion to reopen. *Id.* at 541. The Fifth Circuit denied the alien's petition for review. The court held that the Board did not err in discounting the alien's documentary evidence, which included a notice purportedly from the Jianguan Villagers' Committee. *Id.* at 541-43. The court noted that the notice and the alien's other documents were not authenticated pursuant to the applicable regulation or by any other means. *Id.* at 542 (further noting that the alien did not even submit affidavits to provide information about the reliability of his documents).

*Jisheng Xiao v. Holder*, 459 Fed. App'x 485 (5th Cir. Feb. 7, 2012) (unpublished)

The Board denied the alien's motion to reopen, finding that the alien had not demonstrated prima facie eligibility for asylum because his key evidence (a letter from a village committee) was unreliable, lacked authentication, and lacked a certification of translation. *Id.* at 486. The Fifth Circuit denied the alien's petition for review. The court held that the alien had not properly authenticated the letter. *Id.* at 487. The alien had attempted to establish the reliability of the letter in his own affidavit; however, he did not have personal knowledge of the letter's genesis. *See id.* The alien had asserted that his mother obtained the letter from the local authorities. *Id.* Accordingly, the court held that the Board did not err in concluding that a proper means of alternate authentication would have been an affidavit from the alien's mother as to how the document was obtained. *Id.* The Fifth Circuit also noted that the background evidence (including a report from the State Department) did not tend to support a finding that the village committee letter was authentic. *Id.* at 487. Based on the foregoing, the court concluded that the Board was permitted to discount the letter — whether or not the alien had included a proper certificate of translation. *Id.* Finally, the Fifth Circuit stated that the Board did not err in assigning less weight to the letter on account of the fact that it was obtained for the purposes of immigration proceedings. *Id.* at 487-88.

*Libin Xie v. Holder*, 491 Fed. App'x 472 (5th Cir. Nov. 1, 2012) (unpublished)

The Board denied the alien's motion to reopen, which was based on the alien's recent practice of Falun Gong in the United States. *Id.* at 473. The Fifth Circuit dismissed in part and denied in part the alien's petition for review. The court approved of the Board's decision to afford limited weight to the alien's documentary evidence on the grounds that it was not authenticated. *Id.* The court also held that the Board did not err in relying upon a prior unchallenged adverse credibility determination of the IJ in limiting the weight given to the alien's documentary evidence. *Id.* (“[W]e have in persuasive unpublished cases held as we do here – that the BIA does not abuse its discretion by basing its denial of a motion to reopen on an IJ's prior adverse credibility ruling.”).

*Jie Zheng v. Holder*, 465 Fed. App'x 350 (5th Cir. Mar. 20, 2012) (unpublished)

The Board denied the alien's motion to reopen. *Id.* at 351. The Fifth Circuit dismissed in part and denied in part the alien's petition for review. The court held that the Board was entitled to accord little weight to a family-planning letter because the letter was unsigned, unauthenticated, and obtained for the purposes of the motion to reopen. *Id.* at 352.

*Yanifen Wang v. Holder*, 569 F.3d 531 (5th Cir. 2009)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 532. The Fifth Circuit denied the alien's petition for review, finding that substantial evidence supported the IJ's adverse credibility determination. *Id.* at 540. In support of this conclusion, the court found that the alien's corroborative evidence did not compel belief in her testimony. *See id.* at 539. According to the court, the alien's medical records were "sketchy and unhelpful." *Id.*; *see also id.* at 534 n.3. Similarly, the alien's identity evidence was "confusing and suspect." *Id.* at 539; *see also id.* at 535-36 (noting that the alien's identity documents contained mistakes and inconsistencies). Finally, the court did not find error in the IJ's discounting of a supporting affidavit on the grounds that the person who prepared it did not testify in court even though he appeared to be available. *Id.* at 536, 539.

## **Sixth Circuit**

*Ngam v. Holder*, 557 Fed. App'x 511 (6th Cir. Feb. 28, 2014) (unpublished)

The Board affirmed the IJ's denial of asylum and withholding of removal. *Id.* at 512. The Sixth Circuit dismissed in part and denied in part the alien's petition for review, leaving undisturbed the IJ's adverse credibility finding. *See id.* at 514. In light of the adverse credibility finding, the court held that the IJ properly discounted a Mauritanian arrest warrant submitted by the alien since the alien "could not explain how, precisely, he obtained the document." *Id.* at 515 (noting that the alien did not submit an affidavit from either of the individuals who purportedly obtained the document and delivered it to him).

*Abdurakhmanov v. Holder*, 735 F.3d 341 (6th Cir. 2012)

The Board dismissed the alien's appeal from the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 343. The Sixth Circuit dismissed the alien's petition for review, but noted that the Board's and IJ's decisions suffered from a number of errors regarding the alien's credibility and corroboration. *Id.* Among other issues, the court found that the Board and IJ erred in discounting some of the alien's documents on the grounds that they were not originals and were not prepared contemporaneously with the events that they described. *Id.* at 347-48. In this regard, the Sixth Circuit first found that the case relied upon by the IJ – *Ramaj v. Gonzales*, 466 F.3d 520 (6th Cir. 2006) – did not actually address "the relative weight to be given [to] originals or photocopies" of documents. *Id.* at 348. The court then held that the documents' lack of contemporaneousness was an insufficient basis to discredit them because they were records of past events, not speculations about the future. *Id.* The court noted that the documents were created shortly after the events they described, not "years later in anticipation of [an] asylum hearing," and thus were entitled to some consideration. *Id.*

*Sao v. Holder*, 333 Fed. App'x 73 (Jun. 24, 2009) (unpublished)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 74. The Sixth Circuit denied the alien's petition for review, finding that the combined effect of a problem with the alien's testimony and the alien's failure to provide reasonably available corroborating evidence supported the agency's decisions. *See id.* at 78-79. Regarding the evidence the alien *did* submit, the court held that the IJ reasonably discounted a Senegalese hospital certificate on account of a discrepancy contained within the certificate. *Id.* at 80. The document purported to corroborate a 15-day stay in the hospital, but the certificate was dated the same day that the alien allegedly entered the hospital. *Id.*

### **Seventh Circuit**

*Musa v. Lynch*, 813 F.3d 1019 (7th Cir. 2016)

The IJ denied withholding finding that the alien had not established a clear probability that she would be subjected to FGM if returned to Botswana. *Id.* at 1022. The IJ credited the alien's testimony that her family had attempted to forcibly subject her to FGM twice but found that this did not constitute past persecution since she had not actually undergone the procedure. *Id.* The Board affirmed and stated that the alien had not provided objective evidence corroborating her fear of FGM. *Id.* The court found that the IJ erred by placing too much weight on the absence of general country condition evidence, which would confirm prior FGM cases in Botswana, over the specific evidence, through credible testimony, that the alien's family practiced FGM, had twice tried to forcibly subject her to it, and has arranged a marriage for her which was predicated on her having undergone FGM. *Id.* at 1023. The court found that whether the country as a whole practiced FGM was not relevant to the issue of whether the alien's own family would subject her to it. *Id.* The court found that the alien's credible testimony was sufficient to meet her burden of proof and remanded the case for further proceedings. *Id.* at 1024-25.

*Qiu Yun Chen v. Holder*, 715 F.3d 207 (7th Cir. 2013)

The Board dismissed the alien's appeal from the IJ's denial of asylum, based on a finding that the alien had "no well-founded fear of sterilization" in China. *Id.* at 208. The Seventh Circuit vacated the Board's order, finding that the Board inexplicably disregarded the alien's evidence in support of her application. Specifically, the court held that the Board erred in granting *no weight* to letters from the alien's family. *Id.* at 212-13. The Seventh Circuit stated that authentication of the letters was not required because they were "unsworn statements of facts or letters from family members." *Id.* at 212 (internal quotation marks and citation omitted). The court noted that the family members were not "neutral, reliable sources," however, the Board had also discounted a letter written by an individual who was not related to the alien. *Id.* Regarding the alien's other evidence, the Seventh Circuit held that the Board erred in discounting communications from the local government in the alien's native province for lack of authentication. *Id.* at 211-12 (noting that there are multiple means of authenticating a document). Among the alien's documents was a posting from a government website in China. *Id.* at 212. The court held that documents posted on government

websites are “presumptively authentic” if their sponsorship can be verified by an independent viewing of the website – which was possible in this case. *Id.* Finally, the court also criticized the Board for relying heavily on (or misinterpreting) selected passages from the State Department’s Country Report while continuing to “systematically ignore[] the annual reports of the Congressional-Executive Commission on China.” *Id.* at 209-10.

*Yan Song Wang v. Keisler*, 505 F.3d 615 (7th Cir. 2007)

The Board dismissed an appeal from the IJ’s denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 616-17. The aliens in these proceedings were a family from China. *Id.* The Seventh Circuit denied the aliens’ petition for review. The court did not disturb the IJ’s adverse credibility determinations. *See id.* at 622. Furthermore, apart from the credibility determinations, the court found that the IJ did not err in denying the aliens’ requests for relief. *Id.* at 622-24. In this regard, the Seventh Circuit held that the IJ was entitled to give “little weight” to a village certificate regarding the possibility of forcible sterilization in light of the fact that the document was not authenticated, was obtained for the purposes of the removal hearing, and was inconsistent with other, objective evidence in the record. *See id.* at 622.

*Diallo v. Gonzales*, 439 F.3d 764 (7th Cir. 2006)

The Board dismissed the alien’s appeal from the IJ’s denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 764-65. The Seventh Circuit vacated the Board’s decision, finding that the IJ improperly required the alien to present additional corroborating evidence. *Id.* Among other issues, the court found error in the IJ’s two reasons for discounting a summons and arrest warrant from Guinea. *Id.* at 766-67. First, the Seventh Circuit held that it was error to reject the document based on the fact that it “contained French grammatical and spelling errors.” *Id.* at 766 (noting that the record did not indicate that the IJ was competent to interpret French documents and, assuming that he was, “the IJ’s finding that Guinean ‘judicial officers’ would not make spelling and grammatical mistakes is purely speculative”). Second, the court held that the IJ erred in discounting the document for lack of specificity because, in light of the fact that Guinea was “essentially a dictatorship,” the court was not convinced that government authorities would routinely provide exact information and citations to law in an arrest warrant. *Id.* at 767.

## **Eighth Circuit**

*Nadeem v. Holder*, 599 F.3d 869 (8th Cir. 2010)

The Board affirmed the IJ’s denial of asylum, withholding of removal, and protection under the Convention Against Torture — which was based largely on an adverse credibility finding. *Id.* at 871-72. The Eighth Circuit denied the alien’s petition for review, affirming the IJ’s adverse credibility determination. In addition to problems with the alien’s own testimony, the court noted that there were specific, cogent reasons for discounting the alien’s documentary evidence. Specifically, the alien did not submit certified translations of news articles that he had submitted. *Id.* at 873. A medical report submitted by the alien erroneously stated that he was in Pakistan at a time when he was in the United States. *Id.* An arrest warrant submitted by the alien contained



information that was contradicted by Pakistani records obtained through a State Department investigation. *Id.* Finally, two letters from attorneys in Pakistan, which were submitted by the alien, had language, grammar, and spelling errors. *Id.*

*Banat v. Holder*, 557 F.3d 886 (8th Cir. 2009)

The Board affirmed the IJ's denial of asylum, withholding of removal, and relief under the Convention Against Torture. *Id.* at 888-89. The IJ found that the alien was not credible based primarily on a conclusion that the alien had submitted a fabricated letter. *Id.* That conclusion was supported by a letter from the State Department regarding an overseas investigation. *Id.* The Eighth Circuit granted the alien's petition for review, finding that the introduction of the State Department letter violated the alien's due process rights. *Id.* The court held that an IJ should not rely upon a report from an investigation concerning the authenticity of a document absent sufficient evidence to allow the IJ to determine the investigation's reliability and trustworthiness. *Id.* In this case, the Eighth Circuit noted that the identity of the investigator was not given in the report. *Id.* at 891-92. Furthermore, the report lacked details about the investigation itself. *Id.* Finally, the court noted that the report contained multiple levels of hearsay. *Id.* at 892.

*Naing Tun v. Gonzales*, 485 F.3d 1014 (8th Cir. 2007)

The Board affirmed the IJ's denial of asylum, withholding of removal, protection under the Convention Against Torture, and voluntary departure. *Id.* The Eighth Circuit granted the alien's petition for review, finding several errors in the IJ's decision. Specifically, the court held that the IJ erred in giving no weight to an expert's written report on country conditions on the grounds that the expert was not made available for cross examination. *Id.* at 1018-19, 1028-29. The court noted that the expert was "facially unobjectionable" and no explanation had been provided as to why cross-examination was needed. *Id.* Accordingly, the court concluded that it was error to require the presence of the report's author before assigning any weight to the report. *Id.* at 1028-29. The court also criticized the IJ's assessment of the alien's other expert witness, who was available to testify. *Id.* at 1027-28. The IJ had excluded the expert's testimony for four reasons, each of which was rejected by the Eighth Circuit. First, the IJ noted that the witness had not travelled to the alien's native country; however, the court found that this had no bearing on her ability to testify as a medical expert. *Id.* at 1027. Second, the IJ found that the expert's membership in a human rights organization undermined her testimony, but the court held that this merely affected the weight of the evidence and was not a basis to presume a disqualifying bias. *Id.* Third, the IJ noted that the expert's focus was on internal medicine rather than trauma; however, the court held that there was no requirement that an expert be a specialist to provide assistance in evaluation a claim of abuse or torture. *Id.* (concluding that the witness's medical education and work experience qualified her to comment on physical trauma). *Id.* Finally, for similar reasons, the court rejected the IJ's fourth grounds for excluding the expert's testimony, that she lacked specialization in psychiatry or psychology. *Id.* at 1027-28.

*Eta-Ndu v. Gonzales*, 411 F.3d 977 (8th Cir. 2005)

The Board affirmed the IJ's denial of asylum and withholding of deportation. *Id.* at 980-82. (The aliens in these proceedings were a family from Cameroon. *Id.* at 980.) The Eighth Circuit denied

the aliens' petition for review, finding that the IJ reasonably discounted two letters submitted by the aliens to corroborate the lead alien's membership in an opposition political party. *Id.* at 985. The court noted that the letters lacked official letterhead and forensic-document analysis confirmed that the letters were typed on the same machine, despite the fact that they were allegedly sent by two officials with offices located 40 miles apart. *Id.* The Eighth Circuit also noted that the lead alien did not provide a credible explanation for this curious fact. *Id.* Finally, the court held that the alien's other corroborating evidence — which “essentially consisted of letters from family and close friends” — was properly discounted on account of its lack of objectivity. *See id.*

## **Ninth Circuit**

*Martinez v. Sessions*, 873 F.3d 655 (9th Cir. 2017)

An asylum officer found that the alien was credible, had not suffered past harm, and had not established a reasonable fear of future persecution or torture from gangs in El Salvador, and any action would not be with the consent or acquiescence of the government. *Id.* at 657. The alien requested review of that decision by an IJ. *Id.* The IJ stated that the laws do not provide protection from gang recruitment because it is not a protected ground. *Id.* at 657-58. The court remanded the case for the IJ to give proper consideration to the alien's testimony regarding police corruption and acquiescence to gang violence and to “accord proper weight” to the DOS Country Report regarding corruption and government inability or unwillingness to prosecute gang violence. *Id.* at 858.

*Angov v. Lynch*, No. 07-74963, 2015 WL 3540764 (9th Cir. Jun. 8, 2015) (amending and superseding *Angov v. Holder*, 736 F.3d 1263 (9th Cir. 2013))

The Board affirmed the IJ's finding that two subpoenas submitted by the alien, ordering him to appear a police station in Sofia, Bulgaria, were fraudulent. *Id.* at \*1-2. The IJ's decision in this regard was based on a letter from a State Department official that summarized the results of an investigation conducted by the U.S. Consulate in Sofia. *Id.* The Ninth Circuit denied the alien's petition for review, rejecting both his due process and statutory challenges to the admission of the State Department letter. The court noted that the alien was given an opportunity to examine and rebut the contents of the letter. *Id.* at \*3-4. Furthermore, the alien was not entitled to cross examine the letter's preparer in immigration proceedings. *Id.* at \*4. Regarding the reliability of the letter, the Ninth Circuit noted that it was prepared by Government officials with relevant expertise who had “nothing to gain by giving false information” and whose actions are “clothed with the presumption of regularity that attaches to all government actors.” *Id.* at \*14. Accordingly, the court concluded that the IJ and Board did not err in relying on the State Department letter to discredit the subpoenas submitted by the alien.

*Cole v. Holder*, 659 F.3d 762 (9th Cir. 2011)

The Board dismissed an appeal from the IJ's denial of relief under the Convention Against Torture. *Id.* at 764-65. The Ninth Circuit granted the alien's petition for review, finding several errors in the Board's decision. The court held that the Board did not consider one of the alien's expert witnesses and did not adequately explain its reasons for discounting the other expert. *Id.* at 771-

73. In regards to the latter expert, the Ninth Circuit held that the Board's argument that his testimony was contradicted by the State Department's Country Report was not supported by the record. *Id.*

*Sharma v. Holder*, 633 F.3d 865 (9th Cir. 2011)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture, and then denied a motion to reopen. *Id.* at 868. The Ninth Circuit denied the alien's petition for review, agreeing with the Board that the harm the alien feared would not be on account of a protected ground. *Id.* at 870-71. The court noted that the alien claimed that his father had told him that the police in his native country continued to threaten him; however, because this evidence included hearsay, the Ninth Circuit held that the Board and IJ were permitted to give it less weight than the other evidence in the record. *Id.*

*Xiaoguang Gu v. Gonzales*, 454 F.3d 1014 (9th Cir. 2006)

The Board affirmed the IJ's denial of asylum. *Id.* at 1018. The Ninth Circuit denied the alien's petition for review. The court accepted the alien's testimony as true, but noted that his testimony included hearsay from an anonymous friend. *Id.* at 1021. The Ninth Circuit held that it was permissible for an IJ to accord less weight to hearsay evidence when weighed against non-hearsay evidence. *Id.* In this case, the alien's hearsay evidence (which indicated that Chinese authorities sought to speak with him after he departed the country) was outweighed by his non-hearsay evidence (detailing his personal experiences in China). *Id.* at 1022.

*Jarnail Singh v. Gonzales*, 403 F.3d 1081 (9th Cir. 2005)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 1083. The Ninth Circuit granted the alien's petition for review. Among other issues, the court held that the IJ erred in relying on an asylum officer's Assessment to Refer as part of an adverse credibility determination. *Id.* at 1085. The court reasoned that asylum interviews are unreliable points of comparison for a variety of reasons. Regarding the Assessment to Refer, the court noted that: (1) the report contained only a short, conclusory summary of the asylum interview; (2) there was no transcript of the asylum interview; (3) there was no indication of the language used during the interview; (4) there was no indication that the alien had made a sworn oath before the interview; (5) the asylum officer did not testify at the hearing; and (6) the alien was not asked about the Assessment at the removal hearing. *Id.* at 1089-90. Based on the foregoing, the Ninth Circuit held that the Assessment to Refer was not entitled to much (if any) weight in assessing credibility. *See id.*

*Mohinder Singh v. INS*, 292 F.3d 1017 (9th Cir. 2002)

The Board affirmed the IJ's denial of asylum and withholding of deportation based on an adverse credibility finding. *See id.* at 1018. The Ninth Circuit granted the alien's petition for review, holding that variances between the alien's airport statement and his claims at an exclusion hearing did not support an adverse credibility finding. *Id.* at 1021-24. The court found that the alien's airport statement was unreliable for the following reasons: (1) the alien did not speak English and

was not given a translator in his best language; (2) the airport statement did not provide information as to how the statement was taken; (3) the nature of the airport interview did not provide an adequate opportunity for the alien to explain his circumstances and claim; and (4) the alien's history of abuse may have made him reluctant to reveal information regarding such abuse in an interview with unknown government officials. *Id.*

## **Tenth Circuit**

*Vladimirov v. Lynch*, 805 F.3d 955 (10th Cir. 2015)

The Board dismissed the alien's appeal after finding that he had attempted to procure immigration benefits by fraud or willful misrepresentation of a material fact – his sham marriage. *Id.* at 959. At his removal hearing, the alien did not testify but his wife testified about their marriage and the DHS presented as a witness the testimony of CIS Officer Randall who interviewed the alien and his wife in response to the pending I-130 family-based petition and who had ordered a site visit, which was conducted by CIS Officer Gibson. *Id.* at 960. CIS Officer Randall also read from the agency file and CIS Officer Gibson's official reports regarding the site visit and interviews with the alien and his wife. *Id.* The IJ found the alien removable for having engaged in marriage fraud. *Id.* The Board dismissed the alien's appeal. *Id.* The court observed that evidence in a removal hearing is admissible if it is probative and fundamentally fair. *Id.* at 963. The court stated that the hearsay nature of evidence does not make it inadmissible but its hearsay nature does affect the weight given to the evidence. *Id.* at 964. It then found Officer Gibson's evidence probative and fundamentally fair. *Id.* The court denied the petition for review. *Id.* at 965.

*Maatougui v. Holder*, 738 F.3d 1230 (10th Cir. 2013)

The Board affirmed the IJ's decision, which denied multiple applications for relief that were filed by the alien, a native and citizen of Morocco. *Id.* at 1236-37. The Board specifically rejected the alien's argument that the IJ erred by not mentioning her mother's testimony or parts of an expert's testimony in the removal decision. *Id.* at 1237. The Board reasoned that the IJ was not required to "write an exegesis" on the alien's evidence. *Id.* The Tenth Circuit dismissed the alien's petition for review. The court found that the alien's arguments related only to the IJ's credibility determinations and weighing of the evidence — determinations which the court was barred from reviewing because they related to the alien's applications for a hardship waiver and cancellation of removal. *Id.* at 1237-38. The court also held that it lacked jurisdiction to review the Board's apparent decision to grant greater weight to the State Department Country Report than to the alien's expert's testimony. *Id.* at 1238.

*Iliev v. Holder*, 613 F.3d 1019 (10th Cir. 2010)

The Board affirmed the IJ's determination that the alien was ineligible for a hardship waiver pursuant to section 216(c)(4)(B) of the Act. *Id.* at 1021-22. The Tenth Circuit denied in part and dismissed in part the alien's petition for review. *Id.* at 1028. The court held that it lacked jurisdiction to consider whether the Board improperly weighed the evidence as to whether the alien had entered into his marriage in good faith. *Id.* at 1026-28. The record reflected that the Board had considered the alien's evidence; however, the Board rejected such evidence as not credible.

*Id.* at 1026-27. The Tenth Circuit held that it was statutorily prohibited from reviewing the Board's decision to discount the evidence as not credible. *Id.*

*Alzainati v. Holder*, 568 F.3d 844 (10th Cir. 2009)

The Board denied the alien's motion to reopen because his newly proffered evidence was insufficient to establish a likelihood that he would be granted cancellation of removal in reopened proceedings. *Id.* at 847. In support of the motion, the alien had submitted his son's academic records and a psychological assessment of his son — which he claimed demonstrated that his son (a U.S. citizen) would suffer exceptional and extremely unusual hardship upon his removal. *Id.* The Tenth Circuit dismissed in part and denied in part the alien's petition for review. The court held that its review of the denial of the motion was constrained by jurisdictional bars because its jurisdiction over the ultimate issue (i.e. whether the alien could establish the requisite hardship) was limited by such bars. *Id.* at 849. The record reflected that the Board did not wholly ignore the alien's evidence. *Id.* at 851-52. Therefore, the alien had not raised a constitutional claim and, as a result, the court lacked jurisdiction to review the Board's hardship assessment. *Id.*

*Kechkar v. Gonzales*, 500 F.3d 1080 (10th Cir. 2007)

The Board affirmed the IJ's denial of voluntary departure. *Id.* at 1083. The Board's decision was based on a finding that the alien did not establish that he was a person of good moral character because he had falsely claimed to be a U.S. citizen and he had been terminated by his former employer for dishonesty. *Id.* at 1082-83. The Tenth Circuit dismissed in part and denied in part the alien's petition for review, stating that it lacked jurisdiction to consider the Board's voluntary departure determination. *Id.* at 1084. The court held that the alien's arguments about the weighing of evidence did not raise a colorable constitutional claim and, therefore, a jurisdictional bar applied. *Id.*

*Woldemeskel v. INS*, 257 F.3d 1185 (10th Cir. 2001)

The Board affirmed the denial of the alien's applications for asylum and withholding of removal. *Id.* at 1187. In its decision, the Board granted diminished weight to "an allegedly official Ethiopian document," which ordered the alien's arrest, because the document was not properly authenticated and because the document's timing and content raised doubts about its reliability. *Id.* at 1191-92. The Tenth Circuit affirmed the Board's decision, stating that it would not re-weigh the evidence. *Id.* at 1189, 1192. The court found that it was reasonable for the Board to discount the alien's document, given its timing and content. *Id.* at 1192.

## **Eleventh Circuit**

*Li Shan Chen v. U.S. Att'y Gen.*, 672 F.3d 961 (11th Cir. 2011)

The Board dismissed an appeal from the IJ's denial of asylum and withholding of removal. *Id.* at 963. The Eleventh Circuit denied in part and dismissed in part the alien's petition for review. The court first held that the agency's adverse credibility determination was supported by specific, cogent reasons. *Id.* at 964. The court then held that the alien's documentary submissions were

insufficient to rehabilitate his testimony. *Id.* The Eleventh Circuit noted that the alien's evidence included unsworn statements and many documents of "questionable authenticity." *Id.* The court held that unauthenticated documents may be given less weight. *Id.*

*Kazemzadeh v. U.S. Att'y Gen.*, 577 F.3d 1341 (11th Cir. 2009)

The Board dismissed an appeal from the IJ's denial of asylum and withholding of removal. *Id.* at 1350. The Eleventh Circuit granted the alien's petition for review as it related to his fear of religious persecution in Iran, but denied the petition as it related to the alien's claim of persecution on account of his political opinion. *Id.* at 1355-56. In support of his political-opinion claim, the alien had submitted documents indicating that he had been convicted in absentia; however, the court held that the Board was permitted to discount such evidence because the documents had not been authenticated. *Id.* at 1353 (citations omitted).

*Lin Lin Tang v. U.S. Att'y Gen.*, 578 F.3d 1270 (11th Cir. 2009)

The Board dismissed the alien's appeal from the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 1273. The Eleventh Circuit granted the alien's petition for review as it related to an adverse credibility finding. Among other issues, the court disagreed with the IJ's determination that the alien's statements during an airport interview were inconsistent with statements made at her credible fear interview and asylum hearing. *Id.* at 1278-79. In this regard, the Eleventh Circuit noted that other courts have held that statements made during an airport interview may be unreliable as evidence. *Id.* at 1279 (citations omitted). The court also took issue with the IJ's generalized and selective reliance upon the State Department's Country Report because that report actually supported the alien's testimony. *Id.* at 1280.

*Feng Chai Yang v. United States Att'y Gen.*, 418 F.3d 1198 (11th Cir. 2005)

The Board dismissed the alien's appeal from the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 1199. In its decision, the Board affirmed the IJ's finding that the alien did not undergo a forced sterilization. *See id.* at 1205. The Eleventh Circuit dismissed the alien's petition for review as it related to this finding, but remanded the case on other grounds. *Id.* As to whether the alien had been sterilized in China, the court noted that the official documentation submitted by the alien had not been authenticated and, therefore, its reliability was questionable. *Id.* at 1203 n.3.

## **II. Government Reports**

### **First Circuit**

*Xin Qiang Liu v. Lynch*, 802 F.3d 69 (1st Cir. 2015)

The alien filed a motion to reopen because he had converted to Christianity and a motion to rescind the in absentia order alleging ineffective assistance of counsel and lack of notice. *Id.* at 72. The IJ denied the motions due to time and number restrictions, conditions in China had not worsened,

the change in personal circumstances was not a change in country conditions, and there was insufficient evidence to support equitable tolling. *Id.* at 73. The Board adopted and affirmed the IJ's decision and also found that the 14-year gap between the events at issue and the filing of the motions did not demonstrate due diligence. *Id.* The court denied the petition for review. The court found that the IJ did not disregard evidence submitted but rather had given greater weight to the DOS Country Reports regarding conditions in China. *Id.* at 77. The court found that the alien's objections to the weight given to the evidence was an objection to a factual determination rather than to a legal error by the IJ. *Id.* The court found that the IJ's decision was supported by the record. *Id.* at 77-78.

*Nako v. Holder*, 611 F.3d 45 (1st Cir. 2010)

The Board affirmed the IJ's denial of the aliens' application for asylum based on changed country conditions in Albania. *Id.* at 48. The First Circuit rejected the aliens' argument "that the IJ and BIA relied on 'blanket conclusions' in the 2006 Country Report and Asylum Profile and failed to consider his individualized claim" regarding a specific area in Albania. *Id.* at 49-50. The court held that this argument "ignores the IJ's and BIA's careful examination of specific facts in the Country Report and Asylum Profile directly relevant to [the lead applicant's] fear of future persecution." *Id.* at 50 (citing "region-specific" information contained in the Asylum Profile and noting that neither the Country Report nor the Asylum Profile "ignore[d] regional differences" in Albania).

*Amouri v. Holder*, 572 F.3d 29 (1st Cir. 2009)

The Board affirmed the denial of an application for asylum, withholding of removal, and protection under the Convention Against Torture that was filed by an Algerian national. *Id.* at 31. The First Circuit denied the alien's petition for review. In regards to the CAT claim, the court found that the alien's reliance on "various State Department country conditions reports" was misplaced. *Id.* at 35. The First Circuit noted that, while such reports are "generally deemed authoritative in immigration proceedings," they do not "always supplant the need for particularized evidence in particular cases." *Id.* In this regard, although the reports may have shown that Algeria was "a haven for terrorists and wracked by random violence," they did not support the conclusion that the government participated or acquiesced in such violence. *Id.*

*Pakasi v. Holder*, 577 F.3d 44 (1st Cir. 2009)

The aliens, who were ethnic Manadonese and Christian individuals from Indonesia, filed a petition for review of the Board's decision, which affirmed the IJ's denial of their applications for asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 45-46. The First Circuit denied the petition, finding that the IJ did not unfairly assess the record. *Id.* at 47 (distinguishing *Gomes v. Gonzales*, 473 F.3d 746 (7th Cir. 2007)). The court held that it was proper for the IJ to view the record as a whole, "taking into account both the State Department country conditions reports and other record evidence." *Id.* The First Circuit did not agree with the aliens that the IJ "leaned too heavily on country conditions reports, to the exclusion of other evidence, including specific evidence of possible persecution against the [aliens]." *Id.*

*Uruci v. Holder*, 558 F.3d 14 (1st Cir. 2009)

The Board affirmed the IJ's denial of asylum, finding that the Government had rebutted the presumption that the lead respondent had a well-founded fear of persecution by demonstrating changed country conditions in Albania. *Id.* at 16. In its review, the First Circuit found that the IJ did not grant inordinate weight to the Department of State Country Report because the alien's more specific evidence (a report from Amnesty International) predated the Country Report by 3 years and did not appear to rebut the most relevant conclusions contained therein. *Id.* at 20-21.

*Sitha Ly v. Mukasey*, 524 F.3d 126 (1st Cir. 2008)

The Board affirmed the IJ's decision, denying the alien's application for asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 128. The First Circuit denied the alien's petition for review, finding that the IJ properly relied upon the Department of State's Country Report to conclude that circumstances in Cambodia had changed. *Id.* at 132-33. The court noted that the alien did not present specific evidence to counter the information contained in the report. *Id.* ("Although the 2004 Country Report does not paint a rosy picture of human rights and other conditions in Cambodia, in the absence of specific evidence to the contrary, the circumstances of shared political power and a decrease in politically motivated violence support the IJ's conclusion.").

*Tota v. Gonzales*, 457 F.3d 161 (1st Cir. 2006)

The Board affirmed the IJ's denial of an application for asylum and withholding of removal that was filed by the alien, a native and citizen of Albania. *Id.* at 162. The First Circuit affirmed the Board's decision, finding that the alien provided "absolutely no evidence that the IJ neglected to duly review all of the evidence in the record." *Id.* at 168. The court also rejected the alien's argument that the IJ improperly determined that the Government's 33 pages of evidence outweighed his 500 pages. *Id.* at 168 n.11. The court first noted that much of the alien's evidence predated or was identical to the Government's submissions. *Id.* Furthermore, some of the alien's evidence was not relevant to his particular situation. *Id.* The alien also had exaggerated the volume of his submissions by "double-counting many articles entered into the record." *Id.* The First Circuit concluded that the evidence "culled from the State Department asylum claims report, specifically tailored to the [alien's circumstances]," supported the IJ's findings. *Id.* at 168.

*Negeya v. Gonzales*, 417 F.3d 78 (1st Cir. 2005)

The Board affirmed the denial of an asylum application filed by the alien, an Ethiopian national. *Id.* at 81-82 (noting that circumstances in Ethiopia had materially changed vis-à-vis the cessation of hostilities between Ethiopia and Eritrea). The First Circuit dismissed the alien's petition for review, holding that the Department of State's Country Report "trump[ed] the petitioner's earlier 'family history' evidence" because the State Department report was more recent and related to a more relevant period. *Id.* at 84. The First Circuit noted that the alien pointed to some contradictory reports, but the court declined to re-weigh the evidence. *Id.* ("[C]hoosing between conflicting reports in an immigration case is for the factfinder, not for the court of appeals. . . . [I]t is not our job to decide which of two conflicting sets of reports is more credible.") (citations omitted).



*Palma-Mazariegos v. Gonzales*, 428 F.3d 30 (1st Cir. 2005)

The Board affirmed the IJ's decision, denying an application for asylum, withholding of removal, and protection under the Convention Against Torture that was filed by the alien, a native of Guatemala. *Id.* at 32. The First Circuit denied a petition for review, holding that the IJ did not err in concluding that the alien's fear of retaliation by guerillas was no longer well-founded following the end of Guatemala's civil war. *Id.* at 36. The court further held that it was not error for the IJ to give "decretory significance" to the Department of State's Country Report because the report addressed the issues raised by the alien "head-on." *Id.* at 36 ("When such a report convincingly demonstrates material changes in country conditions that affect the specific circumstances of an asylum seeker's claim, the report may be sufficient, in and of itself, to rebut the presumption of future persecution.") (citations omitted).

*Zarouite v. Gonzales*, 424 F.3d 60 (1st Cir. 2005)

The Board affirmed the IJ's denial of asylum, finding that the alien's fear of harm in Morocco was no longer well-founded because of fundamental changes that occurred in that country since his departure. *Id.* at 62. The First Circuit vacated the Board's decision. At issue was whether the government of Morocco had a policy of requiring some Moroccans to move to Western Sahara to influence an anticipated referendum on the territory's independence. *Id.* at 63-64. The court found that the Board relied on the Department of State's Country Report in error, noting that the "State Department's regular country reports are generally persuasive of country conditions . . . but are open to contradiction." *Id.* at 63 (citations omitted). In this case, the Country Report relied upon by the Board did not directly address the alien's claim regarding a policy of forced relocation. *Id.* at 63-64. Because the Country Report did not address the most pertinent aspects of the alien's claim, the First Circuit could not understand why the Board concluded that the report disproved elements of the alien's testimony (which the Board had assumed to be credible). *Id.* at 64. The court conceded that, "conceivably, a country report could reflect such a firm present adherence by a government to high human-rights standards, across a range of activities," that an allegation regarding a more specific type of abuse would be implausible. *Id.* However, the First Circuit did not find that such was the case in this matter.

*Yatskin v. INS*, 255 F.3d 5 (1st Cir. 2001)

The Board affirmed the IJ's decision, denying an asylum application filed by the alien, a Russian citizen. *Id.* at 6-7. The First Circuit affirmed the Board's decision, noting that the record contained no evidence to contradict the State Department's Country Report, which detailed changed country conditions since the alien left Russia. *Id.* at 9-10. There was also no evidence to show that the alien's particular risk of harm was not affected by the generally improved conditions in Russia. *Id.* The court noted that there exists a risk that the Board may rely too heavily on country reports. *Id.* (adding, "Of particular concern is the risk that the BIA might weigh reports of general changed conditions in a country over that of an individual's particular, substantiated fear of persecution."). However, in this matter, the court found that the alien did not present the type of "powerful evidence" that would show that his particular fear of persecution remained well-founded notwithstanding the evidence of generally improved conditions found in the Country Report. *Id.*

## **Second Circuit**

*Hui Lin Huang v. Holder*, 677 F.3d 130 (2d Cir. 2012)

In a precedential decision, the Board reversed the IJ's grant of asylum. *Id.* at 132; *see also Matter of H-L-H- & Z-Y-Z-*, 25 I&N Dec. 209 (BIA 2010). In its review, the Second Circuit approved of the Board's decision to accord special weight to the State Department's Profile of Asylum Claims and Country Conditions in China. *Id.* at 137-38. The court observed that the reports of the State Department are probative and usually the best evidence on country conditions. *Id.* Nonetheless, the Second Circuit granted the alien's petition for review on other grounds and remanded the case. *Id.* at 138.

*Lecaj v. Holder*, 616 F.3d 111 (2d Cir. 2010)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 113. Specifically, the Board affirmed the IJ's conclusion that, even if the alien had established past persecution in the former federation of Serbia and Montenegro, the Department of State's Country Report (and some other evidence) showed that there had been a fundamental change in circumstances in Montenegro, such that the alien's fear of persecution was no longer well-founded. *See id.* at 114. The Second Circuit found that the Board improperly overlooked or discounted portions of the Country Report that referenced ongoing police abuses and a lack of accountability in Montenegro. *Id.* at 119. Nonetheless, the court denied the alien's petition for review because the Country Report did not connect such instances of police abuse to the alien's ethnicity (or to any other relevant protected ground). *Id.*

*Jian Hui Shao v. Mukasey*, 546 F.3d 138 (2d Cir 2008)

In consolidated proceedings dealing with three Chinese nationals who claimed to fear persecution on account of China's population control policies, the Second Circuit first approved of the Board's general framework for reviewing such claims. *Id.* at 142-43. Then, in each case, the court held that the Board did not err in concluding that the alien had not established a well-founded fear of forced sterilization upon return to China. *Id.* at 174. In one case, the Second Circuit noted that the Board specifically acknowledged the evidence most favorable to the alien's claim: certain statements contained within the State Department's Country Report indicating that some women in China were left with practically no choice but to undergo abortion or sterilization; however, the Board was permitted to rely upon other substantial evidence to conclude the particular alien did not face a reasonable possibility of persecution in China. *Id.* at 159. In another case, the Second Circuit held that the Board was permitted to consider national enforcement policies (as opposed to the local policies of an alien's native province) where the alien did not argue that the enforcement policies of his native province were more likely to expose him to a risk of persecution than policies generally applicable throughout China. *Id.* at 162-63. The court also approved of the Board's taking administrative notice of the most recent reports of the State Department. *Id.* at 166 (noting that such reports are usually the best evidence of country conditions). However, the court encouraged the Board to adopt procedures to provide notice of, and an opportunity to respond to, any administratively noticed facts. *Id.* at 168. Finally, in the third case, the court noted that the

Board adequately addressed the alien's evidence specifically related to conditions in her native province and city. *See id.* at 172-73.

*Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315 (2d Cir. 2006)

The Board affirmed without opinion the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 319-20. The Second Circuit found some errors in the IJ's decision, but nonetheless denied and dismissed the alien's petition for review. In its review of the denial of withholding of removal, the court stated that the IJ is required to consider significant factual assertions offered by an alien; however, the court presumes that an IJ has taken into account all of the evidence of record, unless the record compellingly suggests otherwise. *Id.* In its review of the denial of the CAT claim, the Second Circuit held that the IJ did not err in considering an inconsistency between the alien's statements and the State Department's Country Report. *Id.* at 341-42. The court stated that reports from the State Department are generally probative and reliable, although an IJ should be careful not to place excessive reliance upon such reports. *Id.* In this case, the Second Circuit held that the IJ's decision demonstrated that he had not granted the Country Report undue weight. *Id.* at 341-42 (noting that the report was considered in the context of other credibility issues).

*Tambadou v. Gonzales*, 446 F.3d 298 (2d Cir. 2006)

The Board affirmed the IJ's denial of asylum on the grounds that the alien no longer possessed a reasonable fear of persecution in Mauritania because of a fundamental change in circumstances in that country. *Id.* at 299. The Second Circuit granted the alien's petition for review, finding that the Board placed excessive reliance on the State Department's Country Report in reaching this conclusion. *See id.* at 302. The court noted that the report relied upon the Board was outdated. *Id.* at 302-04. Furthermore, the Board appeared to have ignored the complexities contained within the report and did not conduct an individualized assessment of the alien's particular circumstances. *Id.*

*Cao He Lin v. U.S. Dep't of Justice*, 428 F.3d 391 (2d Cir. 2005)

The Board affirmed without opinion the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 394. The Second Circuit granted in part the alien's petition for review. *Id.* at 408. The court rejected the IJ's multiple grounds for discounting the alien's testimony, including a finding that the testimony was not consistent with the State Department's Profile of Asylum Claims and Country Conditions. *Id.* at 403. The Second Circuit noted that the IJ did not explain why she credited this State Department report over the other materials submitted by the alien, which included Congressional testimony from a former administrator of a planned birth office in Fujian Province. *Id.* The court stated that the IJ should have explained why she credited the State Department report over such other evidence, given that the report was based on hearsay and equivocal on the key issues in this case. *Id.*

*Poradisova v. Gonzales*, 420 F.3d 70 (2d Cir. 2005)

The Second Circuit consolidated two petitions for review that were filed by a family unit from Belarus. *Id.* at 76. In the first petition for review, the aliens challenged the denial of their

application for asylum; in the second petition for review, they challenged the Board's denial of a subsequent motion to reopen. *Id.* at 75-76. The Second Circuit remanded the case to the Board, finding several errors in the underlying proceedings. The court criticized the IJ for appearing to overlook the State Department country reports that corroborated the general aspects of the aliens' claims. *Id.* at 79. Similarly, in the context of the motion to reopen, the Second Circuit stated that the Board erred in dismissing the aliens' evidence of country conditions as "merely cumulative." *Id.* at 81-82. The court noted that the aliens' evidence — which included official reports — demonstrated that conditions in Belarus had worsened materially for the aliens. *Id.*

*Tian-Yong Chen v. INS*, 359 F.3d 121 (2d Cir. 2004)

The Board affirmed the IJ's denial of asylum and withholding of removal. *Id.* at 123. The Second Circuit granted the alien's petition for review, finding that the Board and IJ had overlooked or ignored the alien's testimony that he had been beaten in China. *Id.* at 127-28. In remanding the case, the court specifically cautioned the IJ not to place "excessive reliance" on the country reports of the Department of State. *Id.* at 130. The Second Circuit held that such reports are generally probative, but the IJ was still required to weigh such evidence against the alien's more particularized claim. *See id.*

### **Third Circuit**

*Mendoza-Ordonez v. Att'y Gen. U.S.*, 869 F.3d 164 (3d Cir. 2017)

The IJ denied the alien's withholding application finding that, although he had testified credibly to receiving death threats due to his political opinion, he had not established that the Honduran government was unable or unwilling to protect him. *Id.* at 167. The IJ also found that the alien could safely relocate in Honduras. *Id.* The Board dismissed his appeal. *Id.* at 168. The alien argued in his petition for review that the Board erred when it analyzed his argument that the IJ ignored key evidence. *Id.* at 169. The court found that the Board should have examined whether the IJ reviewed and weighed the evidence of record, including country reports, and if the Board found that the IJ had ignored the country reports then it should have determined whether this erred undermined the factual findings regarding the Honduran government's ability and willingness to protect the alien. *Id.* The court found that the Board erred by instead applying the legal standard for a motion to remand or reopen, which required an examination as to whether the reports were significant enough to warrant consideration as new evidence, despite already being in the record, and whether the reports warranted reopening of proceedings. *Id.* The court ultimately granted the petition for review after finding that the alien warranted being granted withholding of removal. *Id.* at 174.

*Jin Long Zhang v. Att'y Gen. U.S.*, No. 13-4504, 2015 WL 1475811 (3d Cir. Apr. 2, 2015)

The Board denied the alien's motion to reopen as untimely. *Id.* at \*1. The Third Circuit denied the alien's petition for review, based on a conclusion that the alien did not establish that he was a practicing Catholic and, therefore, he did not establish the materiality of any changed circumstances related to the treatment of practicing Christians in China. *Id.* at \*3-4. However, although the court denied the petition for review, the court did find several aspects of the Board's

assessment of the evidence troubling. *See id.* at \*2–4. First, the Third Circuit stated that the Board did not adequately address portions of the State Department’s Religious Freedom Report that supported the alien’s claim. *Id.* at \*2. But the court found that this was not reversible error because the Board was not required to find those portions of the report more persuasive than the portions it explicitly considered. *See id.* The Third Circuit next criticized the Board for relying on a prior adverse credibility determination—which was unrelated to the basis for the motion to reopen—to discredit certain letters and an official certificate submitted by the alien. *Id.* at \*3 (stating that reliance on a prior adverse credibility determination is improper under Third Circuit precedent where the basis for that assessment is “utterly unrelated” to the later claim) (citations omitted). Nonetheless, the court noted that the consideration of these documents without reference to any prior adverse credibility determination would not compel a conclusion contrary to the Board’s assessment of the evidence. *Id.* Finally, the Third Circuit found error in the Board’s assessment of certain news articles submitted by the alien, in that the Board did not demonstrate that it had considered the articles “at all.” *Id.* (further noting that the Board did not explain any basis for rejecting the articles). However, the court held that remand was not appropriate in light of the Board’s findings regarding the alien’s own faith. *Id.* at \*3–4.

*Sheriff v. Att’y Gen. of the U.S.*, 587 F.3d 584 (3d Cir. 2009)

The IJ granted an asylum application that was filed by the alien, a native and citizen of Liberia. *Id.* at 586-88. On appeal, the Board took administrative notice of the State Department’s 2006 Country Report and concluded that the presumption of a well-founded fear had been rebutted because a fundamental change in country conditions had occurred Liberia. *Id.* at 588. Accordingly, the Board reversed the grant of asylum. *Id.* (noting that the Board also rejected the alien’s claim for humanitarian asylum). The Third Circuit granted the alien’s petition for review. Regarding the presumption of a well-founded fear, the court held that the Board placed undue weight on the Country Report, ignoring the alien’s testimony and other particular evidence. *Id.* at 590-93 (“[G]eneral evidence of improved country conditions will not suffice to rebut credible testimony and other evidence establishing past persecution; evidence of changed country conditions can successfully rebut the presumption *only* if it addresses the specific basis for the alien’s fear of persecution.”).

*Xiu Jin Yu v. Att’y Gen. of the U.S.*, 513 F.3d 346 (3d Cir. 2008)

The Board affirmed the IJ’s denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 347. The Third Circuit dismissed the aliens’ petition for review, finding that the Board was permitted to credit the country reports of the Department of State over an affidavit from John Aird, a retired demographer. *Id.* at 347, 349 (recognizing that the Third Circuit has repeatedly recognized the value of the country reports as evidence).

*Ambartsoumian v. Att’y Gen. of the U.S.*, 388 F.3d 85 (3d Cir. 2004)

The Board affirmed the IJ’s decision, denying an application for asylum, withholding of removal, and protection under the Convention Against Torture that was filed by a family seeking protection from Ukraine and Georgia. *Id.* at 86-87. The Third Circuit denied the aliens’ petition for review, finding that the IJ was justified in relying upon the Department of State Country Reports for

Georgia and Ukraine, in addition to the Asylum Profiles for those countries. *Id.* at 89. The court noted that the IJ had reviewed the aliens' testimony and affidavits, in addition to the more general reports. *Id.* at 93-94.

*Jian Lian Guo v. Ashcroft*, 386 F.3d 556 (3d Cir. 2004)

The Board denied the alien's motion to reopen, through which the alien was seeking to apply for asylum based on China's one-child family planning policy. *Id.* at 560. The Third Circuit granted a petition for review, finding that the Board abused its discretion in deeming the alien's evidence insufficient to establish prima facie eligibility for asylum. *Id.* at 563-66. The court held that the Board gave inadequate weight to the alien's principal evidence: an affidavit from John Aird, a former specialist on demographic developments and population policy in China. *See id.* The Court further noted that much of Mr. Aird's affidavit was devoted to discrediting the State Department's April 1998 Profile of Asylum Claims and Country Conditions in China. *Id.* at 565. The Third Circuit concluded a motion to reopen that is supported by substantial evidence (such as the affidavit submitted by Mr. Aird), the Government's submission of an outdated State Department report, without more, would not undermine an alien's prima facie showing. *Id.*

*Zubeda v. Ashcroft*, 333 F.3d 463 (3d Cir. 2003)

The Board affirmed the IJ's denial of asylum and withholding of deportation, but reversed the IJ's grant of protection under the Convention Against Torture. *Id.* at 465. The Third Circuit vacated the Board's decision, finding that the Board's analysis as to the likelihood that the alien would be detained upon repatriation to the Democratic Republic of the Congo was flawed. *Id.* at 475-76. After criticizing the Board for accepting the IJ's adverse credibility determination without question, the Third Circuit found that the Board also erred in dismissing the country reports that were introduced before the IJ. *Id.* at 476-78. The court held that the country reports were probative of the political situation in the alien's native country and, therefore, they were entitled to consideration. *Id.* at 477-78.

*Sevoian v. Ashcroft*, 290 F.3d 166 (3d Cir. 2002)

The Board denied the alien's motion to reopen, through which he was seeking to apply for withholding of removal to Georgia under the Convention Against Torture. *Id.* at 169. The Third Circuit denied the alien's petition for review. The court affirmed the Board's conclusion that insufficient evidence supported the alien's claim to relief. *Id.* at 175 (noting that a reference to "insufficient evidence" indicated that the Board had weighed the evidence in the record). The court further held that the Board could reasonably give greater weight to the Department of State Country Report than to documents prepared by private human rights groups. *Id.* at 176.

## **Fourth Circuit**

*Ai Hua Chen v. Holder*, 742 F.3d 171 (4th Cir. 2014)

The Board affirmed the IJ's denial of asylum and withholding of removal. *Id.* at 174. The aliens (natives of China's Fujian Province) were found to be credible, but the IJ concluded that they had

not established a well-founded fear of persecution based on either their alleged violation of China's one-child policy or their Christian faith. *Id.* The Fourth Circuit granted the aliens' petition for review as it related to the one-child policy, but denied the petition as it related to the aliens' religious claim. *Id.* In granting the petition for review, the court held that the Board relied too heavily on the State Department's Country Report. *Id.* at 179-81. The court noted that it generally approves of the Board's reliance upon such reports; however, it cautioned the Board to avoid "treating these Country Reports 'as Holy Writ' immune to contradiction." *Id.* at 179 (quoting *Galina v. INS*, 213 F.3d 955, 959 (7th Cir. 2000)). In this case, the Fourth Circuit noted that the aliens had offered powerful contradictory evidence, which the Board and IJ did not adequately address. *Id.* at 179-80. The court specifically criticized the Board for not fully addressing the 2009 Annual Report from the Congressional-Executive Commission on China ("CECC Report"), which appeared to contradict the State Department report. *Id.* at 180. Moreover, the Board did not explain why it found the more recent CECC Report to be less persuasive than the 2007 Country Report. *Id.* The Fourth Circuit also singled out a "copy of a screenshot from a Fujian Province government webpage" as a piece of evidence that was overlooked by the Board. *Id.* at 180-81.

*Kourouma v. Holder*, 588 F.3d 234 (4th Cir. 2009)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 237. The Fourth Circuit granted the alien's petition for review. The court criticized the Board and IJ for not addressing the State Department's Country Report and the State Department Report on Female Genital Mutilation in Guinea. *Id.* at 241-42 (noting that State Department reports are not conclusive evidence of the facts of a particular alien's claim, but that they are important background evidence). The Fourth Circuit also held that the IJ did not provide specific, cogent reasons for rejecting two doctors' notes that the alien submitted in support of her claim. *Id.* at 242 (holding that the IJ could not discount a doctor's note merely because it was not notarized). Similarly, the Fourth Circuit held that the IJ and Board could not discount the alien's affidavit solely on the grounds that it had substantially similar language to the affidavit of another asylum applicant. *Id.* at 243 (stating that the agency must provide sufficient reasoning for concluding that such similarities undermine the credibility of a particular alien's affidavit).

*Gonahasa v. INS*, 181 F.3d 538 (4th Cir. 1999)

The Board reversed the IJ's finding that the alien had not been persecuted in Uganda; nonetheless, the Board denied the alien's application for asylum based on a finding that country conditions in Uganda had materially changed such that the alien's fear of harm was no longer well-founded. *Id.* at 540. The Board's decision relied mostly on the State Department's 1996 Profile of Asylum Claims and Country Conditions for Uganda. *Id.* at 542. The Fourth Circuit denied the alien's petition for review, finding that the Board properly considered the State Department report. *Id.* (stating, "A State Department report on country conditions is highly probative evidence in a well-founded fear case.").

## **Fifth Circuit**

*Kassa v. Ashcroft*, 83 Fed. App'x 601 (5th Cir. Dec. 10, 2003) (unpublished)

The Board summarily affirmed the IJ's denial of asylum and withholding of removal. *Id.* at 601. The Fifth Circuit affirmed the Board's decision. The court held that the IJ did not err in giving more weight to the State Department Country Report than to reports from Amnesty International, Human Rights Watch, and Reuters News Service. *Id.* ("Sources such as the United States State Department are the 'most appropriate and perhaps the best resource . . . to obtain information on political situations in foreign nations.'") (quoting *Rojas v. INS*, 937 F.2d 186, 190 n.1 (5th Cir. 1991)).

## **Sixth Circuit**

*Mullai v. Ashcroft*, 385 F.3d 635 (6th Cir. 2004)

The Board affirmed, without opinion, the IJ's denial of asylum and withholding of removal. *Id.* at 637. The Sixth Circuit denied the alien's petition for review. Regarding the alien's fear of future harm in Albania, the court found no error in the IJ's reliance on the State Department's reports on current country conditions. *See id.* at 639. Although the Sixth Circuit acknowledged that State Department reports may be problematic sources on which to rely, the court adopted the view that such reports are "generally the best source of information on conditions in foreign nations." *Id.* (quoting an unpublished Sixth Circuit case).

*Koliada v. INS*, 259 F.3d 482 (6th Cir. 2001)

The Board affirmed the IJ's denial of asylum and withholding of removal. *Id.* at 483. The Sixth Circuit denied the alien's petition for review. The IJ had determined – based in part on a State Department profile of Ukrainian asylum claims – that the alien no longer possessed a well-founded fear of return. *See id.* at 487-88. The Sixth Circuit noted that other circuits had held that State Department reports on country conditions were "entitled to significant deference," but that those reports had also been attacked for lacking impartiality or containing other flaws. *Id.* The court recognized that a State Department report such as the profile, which was specifically prepared for the INS, would tend to support the Service's position. *See id.* Nonetheless, the Sixth Circuit did not find that the IJ erred in relying upon the State Department's report.

## **Seventh Circuit**

*Ji Cheng Ni v. Holder*, 715 F.3d 620 (7th Cir. 2013)

The Board denied the alien's motion to reopen, which was based on an allegation of changed country conditions in China. *Id.* at 622. The Seventh Circuit granted the alien's petition for review. In denying the motion, the Board had relied upon a profile of asylum claims from the Department of State. *Id.* at 624. The alien submitted a scholarly critique of the profile, but the Board found the critique to be unpersuasive. *Id.* at 624-25. The Seventh Circuit noted that the Board was entitled to reject the scholarly critique, in light of the deference owed to State



Department reports. *Id.* However, the court found other errors in the Board's assessment of the evidence. Among other issues, the court found that the Board did not adequately address the alien's additional evidence, which pertained more specifically to his home province and town. *Id.* at 626-28 (noting that the evidence included reports of the Congressional-Executive Commission on China ("CECC") and documents purportedly from authorities in China). The court also criticized the Board for not explaining its apparent decision to credit some portions of the CECC reports, but not others. *See id.* at 627.

*Koval v. Gonzales*, 418 F.3d 798 (7th Cir. 2005)

The Board affirmed without opinion the IJ's denial of an asylum application filed by two natives and citizens of the Ukraine. *Id.* at 799-800, 803. The Seventh Circuit granted the aliens' petition for review, finding several errors in the IJ's assessment of the evidence. Among other concerns, the court took issue with the IJ's reliance upon the State Department's Country Report to support the conclusion that the aliens' fear of future religious persecution was not well-founded. *Id.* at 806-07. The Seventh Circuit noted that, although the agency may reasonably rely upon State Department reports for current country conditions, the court had previously cautioned against "chronic over reliance on such reports." *Id.* at 807 (internal quotation marks omitted). In this case, the court held that the IJ should have balanced the general information contained in the Country Report against the aliens' more specific evidence, including the testimony of a proffered expert witness. *See id.* at 807-09 (noting that the witness's testimony showed that the "broad assertions" of the Country Report were subject to qualification).

*Pop v. INS*, 279 F.3d 457 (7th Cir. 2002)

The Board dismissed the alien's appeal from the IJ's denial of asylum and denied the alien's motion to remand based on an allegation of ineffective assistance of counsel. *Id.* at 458. The Seventh Circuit denied the alien's petition for review. *Id.* The court agreed with the Board's conclusion that conditions in Romania had changed such that the alien's fear of persecution was not well-founded. *Id.* at 461-62. In considering the effectiveness of the alien's counsel, the Seventh Circuit held that alien was not prejudiced by his counsel's failure to submit certain newspaper articles concerning Romania because the articles pre-dated the most recent State Department Country Report. *Id.* at 462 (finding that the more recent Country Report was more probative of current conditions in Romania than the newspaper articles). The court similarly found that an affidavit from the alien's ex-wife was not probative of his current risk of harm in Romania. *Id.* As a result, the court reaffirmed its prior precedent holding that "unsubstantiated, uncorroborated, and self-serving evidence" on country conditions was insufficient to outweigh the Country Report. *Id.* (citation omitted).

*Galina v. INS*, 213 F.3d 955 (7th Cir. 2000)

The Board held that the aliens, stateless individuals who feared return to Latvia, were not eligible for asylum because conditions in Latvia had improved materially since they left that country. *Id.* at 956. The Seventh Circuit vacated the Board's decision, criticizing the Board for over-relying on the State Department's Country Report. Among other problems with such reports, the court noted that the State Department may have a "natural inclination to look on the bright side" when

assessing the human rights record of an ally of the United States. *See id.* at 958-59. Accordingly, although Country Reports may sometimes serve as the only evidence available of country conditions, the court cautioned the Board to treat them with “a healthy skepticism, rather than . . . as Holy Writ.” *Id.* at 959.

### **Eighth Circuit**

*Rodriguez-Quiroz v. Lynch*, 835 F.3d 809 (8th Cir. 2016)

The IJ denied the alien’s application for adjustment of status after finding that the alien, who had been in the US lawfully, had not established that he was present in the U.S. on January 21, 2005, where the DHS had submitted evidence that the alien had departed the U.S. on that date. *Id.* at 812-17. The IJ concluded that since the alien had departed the US and has not shown that he lawfully re-entered, he must be present unlawfully. *Id.* at 816-17. In making this determination, the IJ relied upon the TECS-II document submitted by DHS, which was a printout of departures and arrivals. *Id.* 812, 816-17. The DHS stated at the hearing that the it could not disclose the source of the information in the document because that information was sensitive. *Id.* at 814. Although the alien had objected to the document, the DHS stated that the document spoke for itself and the IJ could decide what weight to give it. *Id.* at 816. The Board dismissed the alien’s appeal and also relied upon the TECS-II document to show that he had departed the U.S. *Id.* at 817. The court found that IJ erred in relying solely upon this document to find that the alien had made a departure and found that it was not entitled to a presumption of regularity as information from government records prepared by public officials. *Id.* at 818-19. The court noted that there was no foundation for the document, contrasted this to prior cases where DHS had provided a foundation for a TECS-II printout in the context of border stops, and the absence of any information as to how information was recorded in the TECS system. *Id.* The court noted that the IJ had said that she could not assess the reliability of the information without knowing how it came to be recorded and the alien had argued that the information could have come from an air carrier and not a public official. *Id.* at 819. The court alternatively found that even if entitled to the presumption of regularity, the alien had rebutted that presumption with documentary and witness evidence regarding his action in Rochester, NY, on the day in question which rebutted a finding – based solely on the TECS-II printout – that the alien had departed the US from Houston on that date. *Id.* at 820. The court then found that the inconsistencies between a draft and final I-213, both of which had been submitted by DHS, and the alien’s lack of opportunity to address these documents warranted a remand for further proceedings. *Id.* at 820-21.

*Pavlovich v. Gonzales*, 476 F.3d 613 (8th Cir. 2007)

The Board affirmed, without opinion, the IJ’s denial of asylum, withholding of removal, and relief under the Convention Against Torture. *Id.* at 615. (The aliens in these proceedings were a married couple who were born in the former Soviet Union. *Id.*) The Eighth Circuit denied the aliens’ petition for review, rejecting their argument that the IJ improperly relied upon State Department reports as opposed to media reports of “resurgent anti-Semitism” in Latvia. *Id.* at 618. The court noted that the IJ is permitted to rely on State Department reports in assessing the likelihood of future persecution. *Id.*

*Tu Kai Yang v. Gonzales*, 427 F.3d 1117 (8th Cir. 2005)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 1118. (The aliens in these proceedings were a married couple from China who feared persecution on account of that country's family planning policies. *Id.*) The Eighth Circuit granted the aliens' petition for review, finding that the Board and IJ failed to consider specific, direct, and credible evidence. *Id.* at 1118, 1121-22. The court held that the IJ placed undue weight on the State Department's Profile of Asylum and Country Conditions for China and the State Department's Country Report. *Id.* ("Though these reports are recognized as persuasive, use of such official reports does not substitute for an analysis of the facts of each applicant's individual circumstances.") (internal quotation marks omitted). The court further noted that the IJ's decision lacked any analysis or mention of an affidavit submitted by the aliens, which was prepared by a former senior research specialist for the U.S. Bureau of Census. *Id.*

*Navarajo-Barrios v. Ashcroft*, 322 F.3d 561 (8th Cir. 2003)

The Board affirmed the IJ's denial of asylum. *Id.* at 562. The Eighth Circuit denied the alien's petition for review, rejecting the alien's argument that the Board placed undue reliance on the Government's evidence (which included reports from the State Department). *Id.* at 562, 564. The court held that the Board may reasonably rely on such reports given the State Department's expertise in international affairs. *Id.*

## **Ninth Circuit**

*Jagtar Singh v. Holder*, 753 F.3d 826 (9th Cir. 2014)

The Board affirmed the IJ's denial of withholding of removal, determining that conditions in India had improved such that the presumption that the alien would be persecuted if removed had been rebutted. *Id.* at 830. The Ninth Circuit denied the alien's petition for review. The court approved of the Board's reliance upon country reports from the State Department and United States Citizenship and Immigration Services because such reports were sufficiently individualized and relevant to the alien's claim. *Id.* at 831-34. The court noted that the reports contained some ambiguous and inconsistent language; however, the court held that the Board is not barred from relying upon a country report simply because it contains mixed messages. *See id.* The Ninth Circuit further approved of the IJ's weighing of the country reports against the alien's testimony and supporting affidavits he submitted. *Id.* at 835. The court held that, even though it did not adopt the IJ's adverse credibility finding, the IJ did not err in discounting the affidavits as hearsay evidence. *Id.* On the other hand, the IJ was permitted to credit the country reports because they were objective, public documents. *Id.*

*Roderick Lim Go v. Holder*, 640 F.3d 1047 (9th Cir. 2011)

The Board affirmed the IJ's denial of protection under the Convention Against Torture. *Id.* at 1051. The Ninth Circuit denied the alien's petition for review. The alien — who was possibly facing criminal charges in the Philippines — called the court's attention to the fact that the country reports described several instances of abuse in the Philippine criminal justice system. *Id.* at 1054.

However, the Ninth Circuit noted that the reports also contained information indicating that it was unlikely that the alien would be tortured. *Id.* The court held that the Board was permitted to consider contradictory and ambiguous country reports. *Id.* Furthermore, the Ninth Circuit held that the Board did not err in giving greater weight to more specific evidence on the alien's circumstances than to the general information contained in the country reports. *Id.*

*Aguilar-Ramos v. Holder*, 594 F.3d 701 (9th Cir. 2010)

The Board affirmed the IJ's denial of protection under the Convention Against Torture. *Id.* at 703-04. The Ninth Circuit granted the alien's petition for review as it related to his CAT claim, finding that the Board and IJ failed to consider relevant evidence. *Id.* at 705. Specifically, neither the IJ nor the Board considered the State Department's Country Report, which the court noted is accorded special weight in removal proceedings. *Id.* at 705 n.6.

*Sowe v. Mukasey*, 538 F.3d 1281 (9th Cir. 2008)

The Board dismissed an appeal from the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 1284. In their decisions, the IJ and Board relied upon the State Department's Country Report to conclude that the presumption of future persecution had been rebutted by evidence of changed conditions in Sierra Leone. *Id.* at 1285. The Ninth Circuit denied the alien's petition to review insofar as it challenged this portion of the agency's decisions. *Id.* at 1285-86. The court noted that the IJ made specific findings about the contents of the Country Report. *Id.* at 1286. Although the report contained some somewhat contradictory information, the Ninth Circuit held that the IJ was permitted to rationally construe an ambiguous or contradictory report. *Id.* The court also rejected the alien's argument that the IJ should have granted greater weight to an outdated country report than to the more recent report. *Id.* Nonetheless, the Ninth Circuit granted the alien's petition for review on other grounds. *Id.* at 1289.

*Marcos v. Gonzales*, 410 F.3d 1112 (9th Cir. 2005)

The Board affirmed, without opinion, the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 1115. The Ninth Circuit granted the alien's petition for review. Among other issues, the court rejected the IJ's conclusion that conditions in the Philippines had changed such that the alien's fear of persecution was no longer well-founded. *See id.* at 1120-21. The court held that the IJ relied on a portion of the State Department's Country Report that did not relate to the alien's claim, instead of making an individualized determination as to whether the facts reported in the Country Report affected the alien's specific situation. *Id.*

*Smolniakova v. Gonzales*, 422 F.3d 1037 (9th Cir. 2005)

The Board affirmed the IJ's denial of asylum and withholding of removal. *Id.* at 1040-41. The Ninth Circuit granted the alien's petition for review. Among other issues, the court disagreed with the IJ's conclusion that the government had rebutted the presumption that the alien possessed a well-founded fear. *Id.* at 1051-52. The court found that the evidence relied upon by the IJ in this

regard (two newspaper articles) did not show that conditions in the alien's country had materially improved. *Id.* at 1052. Moreover, the Ninth Circuit held that news articles (as opposed to reports of the Department of State) are not authoritative. *Id.*

*Gonzalez-Hernandez v. Ashcroft*, 336 F.3d 995 (9th Cir. 2003)

The Board affirmed the IJ's decision, denying applications for asylum and withholding of removal that were filed by a family from Guatemala. *Id.* at 997. The Board held that the lead respondent had suffered past persecution; however, based on the State Department's Country Report, the Board concluded that he no longer possessed a well-founded fear of persecution. *Id.* at 998. The Ninth Circuit denied the aliens' petition for review. The court noted that the report relied upon by the Board was somewhat ambiguous and contradictory. *Id.* at 999. Nonetheless, the Board was permitted to rationally construe such a report in its assessment of the alien's claim. *Id.* at 1000-01.

*Kazlauskas v. INS*, 46 F.3d 902, 905 (9th Cir. 1995)

The Board affirmed the IJ's denial of asylum and withholding of deportation. *Id.* at 904. The Ninth Circuit denied the alien's petition for review, affirming the IJ's finding that the alien had not established a well-founded fear of persecution. *Id.* at 906. In this regard, the court approved of the IJ's reliance upon the State Department's Country Report — which, the court noted, had been described as the “most appropriate and perhaps the best resource” for information on circumstances in foreign countries. *Id.* (internal quotation marks omitted).

## **Tenth Circuit**

*Neri-Garcia v. Holder*, 696 F.3d 1003 (10th Cir. 2012)

The Board affirmed the IJ's determination that, although the alien had established past persecution on account of his membership in the particular social group of homosexual men from Mexico, the presumption of future persecution had been rebutted. *Id.* at 1007-08. The Tenth Circuit dismissed the alien's petition for review, finding that it was permissible for the Board to grant different weight to different portions of the Department of State's country reports, provided that the Board did not ignore any evidence of continuing discrimination contained in those reports. *Id.* at 1009. The court reaffirmed its prior case law holding that the Board cannot rely upon general statements from the country reports in lieu of an individualized assessment of an alien's claim. *Id.* at 1009-10 (citing *Krastev v. INS*, 292 F.3d 1268 (10th Cir. 2002)). However, in this case, the Tenth Circuit found that the Board's review of the country reports was sufficiently applicable to the alien's case. *Id.* at 1010 (noting that the Board considered specific developments in the treatment of homosexual men in Mexico).

*Sidabutar v. Gonzales*, 503 F.3d 1116 (10th Cir. 2007)

The Board affirmed the IJ's denial of the aliens' applications for asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 1117. (The aliens were a married couple from Indonesia. *Id.*) The Tenth Circuit denied the aliens' petition for review, agreeing

with the Board's conclusion that the State Department's International Religious Freedom Report outweighed the male alien's testimony on the issue of whether he would be persecuted if returned to Indonesia. *Id.* at 1125. The Tenth Circuit noted that the alien pointed to other documents that rebutted the State Department report, but the court held that it would not reweigh the evidence. *Id.*

*Hang Kannha Yuk v. Ashcroft*, 355 F.3d 1222 (10th Cir. 2004)

The Board affirmed without opinion the IJ's denial of the aliens' applications for asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 1224. (The aliens were an extended family from Cambodia. *Id.*) The Tenth Circuit affirmed the Board's decision. In regards to the aliens' asylum applications, the court held that the IJ properly relied upon the State Department's Country Report in assessing whether the aliens had a well-founded fear of persecution following the Cambodian elections in 1998. *Id.* at 1235-36. The Tenth Circuit cited various decisions from the other courts of appeals for the proposition that the country reports of the Department of State are probative and entitled to significant weight. *Id.* The court noted that the aliens offered rebuttal evidence — including a statement by the president of the International Republican Institute on the Cambodian election of 1998, and a House of Representatives resolution calling for an international tribunal on atrocities committed in Cambodia — however, the IJ was not obligated to find that such evidence was more accurate than the State Department reports. *Id.*

*Krastev v. INS*, 292 F.3d 1268 (10th Cir. 2002)

The Board dismissed an appeal from the IJ's denial of asylum applications filed by two unrelated natives and citizens of Bulgaria. *Id.* at 1270. The Tenth Circuit remanded the case, finding that the Board erred in concluding that changed conditions in Bulgaria were sufficient to rebut the presumption of a well-founded fear of future persecution. *Id.* The court criticized the Board for relying upon the State Department's Country Report without explaining how the information contained therein applied to the aliens' individual cases. *Id.* at 1276. The court noted that the country reports may be probative; however, the court stated that the reports should not be used as substitutes for an individualized review of an alien's particular circumstances. *Id.* at 1276-77.

## **Eleventh Circuit**

*Gaksakuman v. U.S. Att'y Gen.*, 767 F.3d 1164 (11th Cir. 2014)

The Board dismissed the alien's appeal from the IJ's denial of asylum. *Id.* at 1168. The Eleventh Circuit vacated the Board's decision. The alien had claimed that he would be harmed in Sri Lanka based upon his status as a "failed asylum seeker." *Id.* at 1167. He supported this claim with evidence that was not discredited by the IJ, including reports from non-profit organizations and newspaper articles. *See id.* at 1170-71. The court found that the IJ and Board erred in denying the alien's claim based on the fact that the State Department's reports were silent as to whether the Sri Lankan government persecuted failed asylum seekers. *Id.* Although the IJ may rely heavily on the State Department reports, the Eleventh Circuit held that such reports cannot rebut an alien's evidence if the reports do not comment upon the facts relevant to his or her claim. *Id.*

*Xiu Ying Wu v. U.S. Att’y Gen.*, 712 F.3d 486 (11th Cir. 2013)

The Board dismissed the alien’s appeal from the IJ’s denial of asylum, withholding of removal, and protection under the Convention Against Torture, which was based on an adverse credibility finding and a lack of corroboration. *Id.* at 490-91. The Eleventh Circuit granted the alien’s petition for review as it related to the adverse credibility determination, rejecting several of the IJ’s reasons for finding the alien not credible. First, the court held that the finding could not be supported by an implausibility finding. *Id.* at 494. In light of this conclusion, the Eleventh Circuit determined that the other grounds provided by the IJ were insufficient. *Id.* at 494-97. The court found that the IJ had placed undue reliance on the reports of the Department of State. *See id.* at 496. The court explained that such reports cannot, without more, refute an alien’s otherwise consistent and plausible testimony. *Id.* at 496-97 (noting that the alien’s testimony was not internally inconsistent or otherwise unreliable). The Eleventh Circuit also held that, while it was proper for the IJ to discount the alien’s unauthenticated documentation, the IJ erred in concluding that the alien’s otherwise credible testimony was entitled to less weight on account of her failure to authenticate such documentation. *Id.* at 497.

*Esin v. U.S. Att’y Gen.*, 561 Fed. App’x 780 (11th Cir. Dec. 10, 2013) (unpublished)

The Board denied the alien’s motion to reopen. *Id.* at 780. The Eleventh Circuit denied the alien’s petition for review, rejecting her argument that the Board should have accorded “special weight” to the U.S. Commission on International Religious Freedom’s 2012 Annual Report. *Id.* The court held that the report was not entitled to special weight because it was not issued by the State Department. *Id.* at 783-84. The record reflected that the Board considered the report and discussed its contents. *Id.*

*Seck v. U.S. Att’y Gen.*, 663 F.3d 1356 (11th Cir. 2011)

The Board dismissed the alien’s appeal from the IJ’s denial of withholding of removal. *Id.* at 1359. The Eleventh Circuit granted the alien’s petition for review, finding error in the Board’s determination that she could reasonably relocate within Senegal to avoid her daughter being subjected to female genital mutilation (“FGM”). *Id.* at 1359, 1363-64. The court noted that the IJ’s findings on this issue appeared to be based entirely on a State Department profile of Senegalese asylum claims, a State Department report on FGM, and “country conditions as a whole.” *Id.* at 1367 (quoting the administrative record). The court criticized the Board and IJ for not discussing the alien’s more specific evidence regarding her family conditions and personal circumstances. *See id.* The Eleventh Circuit held that, although the Board is permitted to rely heavily on State Department reports, it must still engage in an individualized analysis of the particular applicant’s claim. *Id.* at 1368.

*Reyes-Sanchez v. United States Att’y Gen.*, 369 F.3d 1239 (11th Cir. 2004)

The Board sustained the INS’s appeal from the IJ’s grant of withholding of removal under the Convention Against Torture. *Id.* at 1241-42. The Eleventh Circuit denied the alien’s petition for review, finding no basis to disturb the Board’s conclusion that, assuming the alien would suffer harm if returned to Peru, he had not shown that the Peruvian government would acquiesce in such

harm. *Id.* at 1242. The court held that the Board was permitted to “rely heavily” on the reports of the State Department, which indicated that the Peruvian government was not then acquiescing in the activities of the group feared by the alien. *Id.* at 1243.

### **III. Affidavits or Statements**

#### **First Circuit**

*Legal v. Lynch*, 838 F.3d 51 (1st Cir. 2018)

The IJ found the alien not credible and denied his applications for asylum, withholding, and protection under the Convention Against Torture due to inconsistencies between his sworn statement to a DHS officer and his asylum application, supplemental affidavit, and testimony at his hearing. *Id.* at 53. The IJ stated that more weight was given to the alien’s sworn statement to DHS, since it was prepared immediately after the alien was apprehended by DHS, and less weight to the other evidence since it was prepared more recently and after the alien had had time to come up with the story recounted at the hearing. *Id.* The Board adopted and affirmed the IJ’s decision, emphasizing the discrepancies regarding the bases for the alien’s claim. *Id.* The Board also agreed that the sworn statement to DHS deserved more weight than the other representations. *Id.* The court found the adverse credibility finding supportable. *Id.* at 54. The court noted that an omission of a detail from a DHS interview that is subsequently included in a later submission does not necessarily warrant an adverse credibility finding. *Id.* The court then stated that the inconsistencies identified by the IJ were of a type which created strong doubts about the veracity of the alien’s claim before denying the petition for review. *Id.*

*Xiao He Chen v. Lynch*, 835 F.3d 83 (1st Cir. 2016)

The Board denied the alien’s second motion to reopen finding that it was time and number-barred and did not meet the changed country circumstances exception. *Id.* at 86. The alien argued that his evidence – a letter regarding the alleged experiences of the alien’s brother in China, an arrest warrant, and an injury report among others – did not establish that persons who had engaged in pro-democracy activities in the U.S. were persecuted in China. *Id.* at 87. The court noted that the Board had given less weight to the letter, arrest warrant, and injury report because they were not satisfactorily authenticated and thus lacked probative value. *Id.* The court stated that it has previously explained that the Board has the discretion to “deem a document’s lack of authentication a telling factor weighing against its evidentiary value,” quoting *Hang Chen v. Holder*, 675 F.3d 100, 107 (1st Cir. 2012). *Id.* The court also found that the alien’s testimony did not serve to authenticate the brother’s letter because the IJ had found the alien not credible at his hearing and “special respect is due to the BIA’s refusal to credit an attempt at authentication by a witness whom the IJ earlier found incredible.” *Id.* at 87-88. The court further found that the arrest warrant and injury report, having been included with the brother’s letter, had no independent probative value, plus, as government documents, they needed their own authentication. *Id.* at 88. The court denied the petition for review. *Id.* at 89.



*Jinan Chen v. Lynch*, 814 F.3d 40 (1st Cir 2016)

The IJ denied the alien's asylum claim which was based upon a fear of forced sterilization for violating the one-child policy and because of his membership in and pro-democracy activities on behalf of the China Democracy Party (CDP). *Id.* at 43-44. At his hearing, an assistant director of the CDP testified in support of the alien. *Id.* at 43. The applicant also provided a letter from his father in China in which the father stated that Chinese officials had come to the father's house looking for the alien due to his CDP activities. *Id.* at 44. The Board affirmed the IJ's decision. *Id.* The court found that the agency was entitled to give little weight to the applicant's father's letter, which was unsubstantiated and from an interested witness who was not subject to cross-examination. *Id.* at 46. The court denied the petition for review. *Id.*

*Haizem Liu v. Holder*, 727 F.3d 53 (1st Cir. 2013)

The Board denied the alien's untimely motion to reopen removal proceedings based on changed country conditions in China. *Id.* at 54. The First Circuit denied the alien's petition for review, finding that the Board was permitted to grant "very little weight" to a letter from the alien's friend in China. *Id.* at 56-57. The letter lacked detail and appeared to be prepared for the motion to reopen. *Id.* The First Circuit held that these factors, coupled with the letter's conclusory assertions, provided insight into its likely veracity and reliability. *Id.* Moreover, the letter did not address the extent to which conditions in China had changed. *Id.* The First Circuit also held that the Board did not err in granting greater weight to certain Government documents than to the news articles and non-governmental reports submitted by the alien. *Id.* at 57-58. The court held that the Board has discretion in its weighing of the evidence, provided that the Board demonstrates that it has considered the evidence that supports the alien's claim. *See id.*

*Tawadrous v. Holder*, 565 F.3d 35 (1st Cir. 2009)

The Board denied the alien's untimely motion to reopen removal proceedings based on changed country conditions. *Id.* The First Circuit denied the alien's petition for review. The court principally held that the alien did not establish materially changed country conditions in Egypt. *Id.* at 39. However, the court also agreed that the alien did not establish that his best evidence (a letter from his father) was previously unavailable. *Id.* The First Circuit agreed with the Board that the evidence to establish the letter's prior unavailability was owed little or no weight because it was an unauthenticated photocopy of another individual's statement. *Id.* at 39 n.2.

## **Second Circuit**

*Chang Fan Zeng v. Lynch*, No. 13-3378, 2015 WL 4032533 (2d Cir. Jul. 2, 2015)

The Board denied the alien's untimely motion to reopen. *Id.* at \*1. The Second Circuit denied the alien's petition for review, finding that the alien did not present reliable evidence of changed country conditions in China. The court held that it was permissible for the Board to give little weight to the evidence submitted by the alien—which included a village committee notice and a letter from the alien's father in China. *Id.* Regarding the village committee notice, the Second Circuit stated that the Board may have erred in expecting additional authenticating evidence to

support the notice; however, the Board was permitted to discredit the notice “because it was tainted by [a] previous adverse credibility finding” against the alien. *Id.* Regarding the father’s letter, the court cited several reasons for doubting its veracity or reliability—including the adverse credibility finding and the fact that the letter was “not notarized, appeared to be prepared for the purpose of litigation, and was written by an interested witness who would not be subject to cross-examination.” *Id.* (citations omitted).

*Qin Chen v. Holder*, No. 13-3487 NAC, 2015 WL 1881323 (2d Cir. Apr. 27, 2015)

The Board affirmed the IJ’s denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at \*1. The Second Circuit denied the alien’s petition for review. The court first agreed with the IJ’s adverse credibility finding. *Id.* at \*1–2. The court then found no error in the IJ’s decision to discount some of the alien’s evidence. *Id.* at \*2. In this regard, the Second Circuit found that it was reasonable for the IJ to conclude that a letter from the alien’s underground church was likely fabricated because it was “printed on letterhead with a seal,” even though the alien testified that the church was unofficial and in hiding from the Chinese authorities. *Id.* The court also noted that the letter was purportedly obtained by the alien’s parents, but he could not explain how they had obtained it. *Id.*

*Su Gao v. Holder*, No. 14-2040 NAC, 2015 WL 1515837 (2d Cir. Apr. 6, 2015)

The Board affirmed the IJ’s denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at \*1. The Second Circuit denied the alien’s petition for review, affirming the Board’s conclusion that she did not show that she would be singled out for persecution in China or that there is a pattern or practice of persecution of underground church members in China’s Fujian Province. *Id.* The court noted that the alien had submitted a letter from her aunt—which supported her claims—however, the court stated that the Board and IJ reasonably gave the letter diminished weight because the alien’s aunt was “an interested witness and unavailable for cross examination.” *Id.* (citations omitted).

*Indradjaja v. Holder*, 737 F.3d 212 (2d Cir. 2013)

The Board denied the alien’s timely motion to reopen, through which she sought to present new evidence regarding violence against Chinese Christians in Indonesia. *Id.* at 215-17. The alien’s motion relied heavily on an affidavit from Dr. Jeffrey A. Winters, a professor and expert on human rights in Indonesia. *Id.* at 215. The Board gave the affidavit little to no weight because the alien had not presented the reports and articles cited by Dr. Winters in his affidavit and, therefore, the Board was unable to independently assess his statements and conclusions. *Id.* at 217. The Board further held that the alien’s other evidence was insufficient to warrant reopening. *Id.* The Second Circuit granted the alien’s petition for review, agreeing that the Board erred in not considering the Dr. Winters affidavit. *Id.* at 219-20. The court reasoned that the Board’s discounting of the affidavit was inconsistent with the way that expert testimony is generally treated. *Id.* at 220.

*Y.C. v. Holder*, 741 F.3d 324 (2d Cir. 2013)

In two cases, the Board affirmed the denial of an asylum application filed by a Chinese national who claimed to fear persecution on account of pro-democracy activities in which the alien engaged after arriving in the United States. *Id.* at 328. The Second Circuit denied or dismissed the aliens' petitions for review. *Id.* In one of the cases, the Board had held that the alien did not establish that Chinese authorities were aware of her political activities, which allegedly included participation in a candlelight vigil. *Id.* at 334. The alien's only evidence to suggest that the Chinese authorities were aware of the vigil was a letter from the alien's husband. *Id.* The Second Circuit deferred to the Board's decision to grant the letter little evidentiary weight on the grounds that it was unsworn and submitted by an interested witness. *Id.*

*Kulhawik v. Holder*, 571 F.3d 296 (2d Cir. 2009)

The Board affirmed the IJ's denial of a motion to reopen, in which the alien claimed that his failure to appear was caused by "exceptional circumstances." *Id.* at 297-98. In its decision, the Board concluded that the only evidence submitted by the alien (a sworn affirmation from the alien's attorney) did not actually constitute evidence. *See id.* at 298. The Second Circuit disagreed. *Id.* The court held that, although unsworn statements in a brief do not constitute evidence, an attorney's statements made under penalty of perjury in an affidavit or affirmation do constitute part of the evidentiary record. *Id.* Therefore, the Board erred in granting no weight to the attorney's affirmation. *Id.* Nonetheless, the Second Circuit denied the alien's petition for review because the attorney's affirmation did not actually establish exceptional circumstances that would excuse the alien's failure to appear. *Id.* at 298-99.

*Li Hua Lin v. U.S. Dep't of Justice*, 453 F.3d 99 (2d Cir. 2006)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 101. The Second Circuit dismissed the alien's petition for review as it related to the IJ's finding that the asylum application was untimely. *Id.* at 104-05. The only evidence regarding the alien's entry date was her testimony (which the IJ found to be not credible) and an affidavit from her husband (which the IJ discounted because the husband was not present in the courtroom and available for cross-examination). *Id.* at 104. The Second Circuit did not disturb the IJ's findings in this regard; however, the petition for review was ultimately granted on other grounds.

### **Third Circuit**

*Shardar v. Att'y Gen. of the U.S.*, 503 F.3d 308 (3d Cir. 2007)

The Board denied the alien's motion to reopen removal proceedings based on changed country conditions in Bangladesh. *Id.* at 311. The Third Circuit granted the alien's petition for review, finding that the Board did not consider material evidence before it. *Id.* at 315-16. Specifically, the Board did not explain why it did not accept an affidavit concerning changed circumstances in Bangladesh that was provided by Dr. John Adams, a purported expert in the society, politics, and economics of South Asian countries. *Id.* at 314-16 (noting that the Government did not challenge

Dr. Adams' qualifications or the reliability of his affidavit). Similarly, the Board appeared to overlook an affidavit from the alien's brother in Bangladesh, which was supported by a certification from a doctor who treated the brother. *Id.* at 316-17 (noting that the affidavit and certificate "must be accepted as true at the motion-to-reopen stage").

*Xia Yue Chen v. Gonzales*, 434 F.3d 212 (3d Cir. 2005)

The Board affirmed without opinion the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 215. The Third Circuit denied the alien's petition for review, finding that the IJ properly applied circuit case law regarding corroboration. *Id.* at 218-220. The court found that the IJ was entitled to conclude that the alien's evidence—an unsworn letter from her father and an "abortion certificate"—were insufficient to support her claim for relief. *See id.* Regarding the father's letter, the Third Circuit noted that the father was not subject to cross examination and much of his affidavit appeared to be based on things that his daughter (or others) had told him. *Id.* at 218. The Third Circuit also found that the alien did not authenticate the abortion certificate. *See id.* at 218 n.6. Furthermore, the court held that the IJ permissibly questioned whether the document was genuine (and if so, whether it actually supported the alien's claim), based on information contained in the State Department's Profile of Asylum Claims and Country Conditions. *Id.* at 218-19.

*Sotto v. INS*, 748 F.2d 832 (3d Cir. 1984)

The Board affirmed the IJ's denial of suspension of deportation, asylum, and withholding of deportation. *Id.* at 833. The Third Circuit granted the alien's petition for review, finding that the IJ and Board inexplicably overlooked the alien's best evidence: an affidavit from a Bartoleme Cabanggang, a retired general of the Philippine Air Force and an assemblyman in the Philippines. *See id.* at 836-37. The court noted that the Board and IJ were permitted to discredit the affidavit; however, before doing so, they must articulate their reasons. *Id.* at 837.

## **Fourth Circuit**

*Marynenka v. Holder*, 592 F.3d 594 (4th Cir. 2010)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture based on a lack of reliable evidence. *Id.* at 596. The Fourth Circuit granted the alien's petitions for review, finding that the IJ erred in discrediting some of the alien's evidence. *Id.* Specifically, the court held that the IJ incorrectly discounted the alien's medical record on the grounds that it was not written on clinic letterhead. *Id.* at 601. The court noted that the document bore other indicia of authenticity. *Id.* The Fourth Circuit also held that the IJ erred in discounting a statement that confirmed the alien's membership in a Belarusian youth organization on the grounds that the IJ could not corroborate the information contained in the statement. *Id.* at 602. The court stated that there is no general rule requiring independent corroboration for corroborative evidence. *Id.* Therefore, the statement could not be discredited on the ground that it automatically required corroboration. *Id.*

## **Fifth Circuit**

*Guerrero-Arias v. Holder*, 423 Fed. App'x 358 (5th Cir. Apr. 18, 2011) (unpublished)

The Board dismissed an appeal from the IJ's denial of a motion to reopen proceedings in which the alien was ordered deported in absentia. *Id.* at 359. The Fifth Circuit denied the alien's petition for review, rejecting his argument that the Board "wholly discount[ed] the affidavits he submitted in support of his motion to reopen." *Id.* at 360. The court noted that the Board did not expressly mention one of the alien's affidavits; however, the Board's decision did implicitly take note of the affidavit. *Id.* The court further held that the Board was not required to find any of the affidavits submitted by the alien to be credible. *Id.*

*Osman v. Gonzales*, 135 Fed. App'x 681 (5th Cir. Jun. 16, 2005) (unpublished)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 682-83. The Fifth Circuit denied the alien's petition for review, finding that the IJ did not err in discounting the alien's documentary evidence. *Id.* at 684-85. The court held that it was permissible to accord less weight to a letter from a psychologist in Sudan because the IJ determined that "there were indications it was submitted merely to bolster [the alien's] story of abuse." *Id.* Similarly, the court held that the IJ was permitted to discount letters from Sudanese human rights leaders because they were "merely form letters." *Id.*

## **Sixth Circuit**

*Trujillo-Diaz v. Sessions*, 880 F.3d 244 (6th Cir 2018)

The IJ denied asylum and withholding finding that the applicant had not shown that she would be singled out individually for persecution on account of her family membership. *Id.* at 247. The alien had sought asylum due to her fear that the La Familia drug cartel would seek revenge against her and her family because her brother had refused to work for them and had fled to the U.S. *Id.* The Board dismissed the alien's appeal and she did not file a petition for review. *Id.* She subsequently filed a motion to reopen after learning that her father had been kidnapped by the Knights Templar cartel who told him that they were looking for her brother because he had refused to work for the La Familia cartel and had fled and that they would hurt the rest of the family if they did not get him. *Id.* at 248. The Board denied the motion because she had not established prima facie eligibility for relief. *Id.* The court found that the Board erred in determining that the alien had a generalized fear rather than a fear of harm on account of a protected ground. *Id.* at 253. The court stated that this error resulted in the Board giving limited weight to the declaration from the alien's expert witness regarding retaliatory violence against families by cartels due to a family member's refusal to join a cartel. *Id.* at 253-54. The court granted the petition for review and remanded for further proceedings. *Id.* at 256.

*Marikasi v. Lynch*, 840 F.3d 281 (6th Cir. 2016)

The IJ found that the alien had not sufficiently corroborating her claim of past persecution and thus had failed to meet her burden of proof regarding harm due to political activities and domestic

abuse. *Id.* at 286. The Board found that the individualized evidence, which included a medical record, an affidavit from former co-worker, a letter from an American psychologist re anxiety re the domestic abuse and PTSD diagnosis, and a letter from a doctor in Zimbabwe re political violence that alien suffered, was entitled to little weight. *Id.* The IJ found the alien not credible and the Board affirmed. *Id.* The court stated that its role was not to re-weigh evidence but rather to ensure that the evidence of record supported the findings of fact. *Id.* at 289-90. The court found that the evidence failed to fill in the significant gaps in testimony and thus did not sufficiently corroborate the alien's claim. *Id.* at 290.

*Yu Yun Zhang v. Holder*, 702 F.3d 878 (6th Cir. 2012)

The Board denied the alien's motion to reopen, which was based on an allegation of changed country conditions in China. *Id.* at 879. The Sixth Circuit granted the alien's petition for review, finding several errors in the Board's analysis. Among other issues, the court criticized the Board for "summarily dismissing personal letters" on the grounds that they were unsworn. *Id.* at 881-82 (noting that other circuits had "admonished the Board for dismissing or according little weight to a statement due to its unsworn nature"). The Sixth Circuit held that the Board should have considered the credibility of unsworn letters on a more individualized basis. *Id.* (stating, "[A]bsent any evidence of falsity, the unsworn nature of a document . . . provides no basis to refuse to credit it.").

*Yan Xia Zhang v. Mukasey*, 543 F.3d 851 (6th Cir. 2008)

The Board denied the alien's motion to reopen or to consider a successive asylum application. *Id.* at 851. The Sixth Circuit denied the alien's petition for review. The court noted that the alien had previously been found to be not credible, and she had made no attempt to rehabilitate her credibility. *Id.* at 852-53, 855. In that context, the Sixth Circuit held that the Board's permissibility discounted an uncorroborated letter from the alien's best friend, which purportedly indicated that the alien faced an individualized risk of persecution in China. *Id.* at 855.

## **Seventh Circuit**

*Silais v. Sessions*, 855 F.3d 736 (7th Cir. 2017)

The IJ found that the alien had not met his burden of proof because he did not provide sufficient evidence to corroborate his vague and inconsistent testimony. *Id.* at 741. In making this determination, the IJ considered the testimony of Mr. Concannon, the expert witness on country conditions in Haiti, and the affidavit from Dr. Rowley stating that the alien's scars were consistent with the alleged abuse. *Id.* at 740-41. The Board affirmed the IJ's decision and also noted that the evidence from Mr. Concannon and Dr. Rowley were too general and did not corroborate the events upon which the claim was predicated. *Id.* at 741-42. The alien argues that the IJ gave the evidence little weight. *Id.* at 743. The court found both the IJ and the Board had considered the evidence provided and discussed or analyzed the evidence in detail. *Id.* The court found that there was no error in the finding that this evidence was insufficient to meet the alien's burden of proof. *Id.* at 744.

*Yi Xian Chen v. Holder*, 705 F.3d 624 (7th Cir. 2013)

The Board dismissed the alien's appeal and denied his motion to remand based on a finding that the alien's new evidence was unreliable. *Id.* at 626-28. The Seventh Circuit denied the alien's petition for review. The court held that the Board did not err in discounting photographs that were undated and not given any description or foundation in the alien's supporting affidavit. *Id.* The court also held that the Board was permitted to find that a letter from the alien's wife was not reliable because her statements were uncorroborated and self-serving. *Id.*

*Gebreeyesus v. Gonzales*, 482 F.3d 952 (7th Cir. 2007)

The Board denied the alien's motion to reopen, which was based on an allegation of changed country conditions in Ethiopia. *Id.* at 953. The Seventh Circuit granted the alien's petition for review, finding that the Board did not consider the alien's evidence. *Id.* The court also found error in the Board's alternative finding that the alien had not presented evidence that would change the result in her case. *Id.* at 955. In this regard, the Seventh Circuit held that the Board should not have discounted letters from the alien's brothers solely on the grounds that they were neither sworn nor authenticated. *Id.* (stating that the rule requiring authentication applies to official records, but not unsworn letters from family members).

## **Eighth Circuit**

*Yatim v. Mukasey*, 531 F.3d 584 (8th Cir. 2008)

The Board affirmed the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 586. (The aliens in these proceedings were a family seeking relief from removal to the Palestinian territory. *Id.*) The Board then denied a motion to reopen. *Id.* The Eighth Circuit denied the aliens' petitions for review from both decisions. In considering the denial of asylum, the Eighth Circuit held that the IJ permissibly discounted affidavits and evidence indicating that "Muslims had told [the lead alien's] parents they knew about the asylum application and the [family] would be harmed if they returned" because such evidence was not authenticated. *Id.* at 589-90.

*Ibrahim v. Gonzales*, 434 F.3d 1074 (8th Cir. 2006)

The Board affirmed, without opinion, the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 1076. The Eighth Circuit denied the alien's petition for review, rejecting an argument that the alien's due process rights were violated by the IJ's denial of a continuance. *Id.* The court found that the alien had not shown that he was prejudiced by any alleged error in the denial of a continuance. *Id.* at 1080-81. In this regard, the court held that the alien's proffered evidence (a statement from his uncle) was unlikely to outweigh the existing evidence indicating that the alien lacked credibility. *Id.* The statement was procured six years after an alleged phone call that it corroborated and two years after the alien had first claimed that the phone call had taken place. *Id.*

*Mendoza v. INS*, 28 Fed. App'x 586 (8th Cir. Feb. 14, 2002) (unpublished)

The Board affirmed the IJ's denial of asylum and withholding of deportation. *Id.* at 586. The Eighth Circuit denied the alien's petition for review. The court held that the Board did not err in according no weight to the alien's documentary evidence because such evidence was unreliable. *Id.* at 587. Specifically, the court noted that a statement purportedly from the mayor of the alien's former town contained at least one error and conflicted with the alien's claims. *Id.*

### **Ninth Circuit**

*Davinder Singh v. Holder*, 593 Fed. App'x 690 (9th Cir. Feb. 18, 2015) (unpublished)

The Board affirmed the IJ's denial of protection under the Convention Against Torture. *Id.* at 691. The Ninth Circuit granted the alien's petition for review, finding that the Board did not provide adequate reasons for granting little weight to affidavits submitted by the alien's wife and brother. *Id.* The court noted that the affidavits contained hearsay—and, therefore, the Board was entitled to accord them little weight if they were contradicted by non-hearsay. *Id.* However, in this case, the affidavits were not contradicted by any other evidence. *Id.* The Ninth Circuit further held that the Board's argument that the affidavits lacked detail did “not hold water.” *See id.* at 691-92 (finding that the affidavits contained sufficient detail to be relied upon by an adjudicator).

*Najmabadi v. Holder*, 597 F.3d 983 (9th Cir. 2010)

The Board denied the alien's motion to reopen, which was based on allegedly changed circumstances in Iran. *Id.* at 985. The Ninth Circuit denied the alien's petition for review. The court noted that the alien had submitted an affidavit, and the court reaffirmed its prior holdings that the Board is required to accept as true the facts stated in such an affidavit unless they are inherently unbelievable. *Id.* at 990. However, in this case, the alien's affidavit only described general conditions in Iran affecting the population at large. *See id.*

*Aden v. Holder*, 589 F.3d 1040 (9th Cir. 2009)

The Board dismissed an appeal from the IJ's denial of asylum, withholding of removal, and protection under the Convention Against Torture. *Id.* at 1043. In finding that the alien had not sufficiently corroborated his claim, the Board held that three letters submitted by the alien were entitled to little weight because they were unsworn, inconsistent, and written by writers who did not know the alien. *Id.* at 1046. The Ninth Circuit denied the alien's petition for review. The court was somewhat skeptical of the Board's grounds for discounting the letters. *See id.* (noting that it was possible for a person who did not know the alien to corroborate certain general aspects of his claim). On the other hand, the Ninth Circuit noted that one of the letters' writers did appear to profess knowledge of the alien—without explaining how the writer knew the alien. *See id.* (noting also that the writer misspelled the alien's name). Ultimately, the court concluded that this was a close case and, in light of other evidence casting doubt on the alien's claim, deferred to the Board's judgment. *Id.*



*Feng Gui Lin v. Holder*, 588 F.3d 981 (9th Cir. 2009)

The Board denied the alien's motion to reopen, which was based on allegedly changed country conditions in China regarding the enforcement of that country's population control program. *Id.* at 984. The Ninth Circuit denied the alien's petition for review. The court affirmed the Board's conclusion that the evidence submitted by the alien did not establish changed conditions in China that materially affected her eligibility for relief. *Id.* at 986. The Ninth Circuit noted that a statement from the alien's mother was cursory and lacking in detail. *Id.* Similarly, a letter from the alien's home village regarding family planning laws did not address the alien's specific circumstances. *Id.*

*Bhasin v. Gonzales*, 423 F.3d 977 (9th Cir. 2005)

The Board denied the alien's motion to reopen, finding that a declaration she submitted in support of the motion was self-serving and not highly probative. *Id.* at 980, 983. The Ninth Circuit granted the alien's petition for review. The court noted that the alien's declaration directly addressed one of the primary grounds for the previous denial of her asylum application: a lack of nexus to a protected ground. *Id.* at 986. The court criticized the Board for discounting the declaration based on a finding that it was self-serving and unsupported by evidence. *Id.* at 986-87 (“[T]he self-serving nature of a declaration in support of a motion to reopen is not an appropriate basis for discrediting its content.”).

*Limsico v. U.S. INS*, 951 F.2d 210 (9th Cir. 1991)

The Board affirmed the IJ's denial of asylum and withholding of deportation, and then denied the alien's motion to reopen. *Id.* at 212. The Ninth Circuit denied the alien's petition for review. The Board had denied the alien's motion to reopen based on a finding that the alien had not established a prima facie case for the relief sought. *Id.* at 213. The court stated that the Board was required to accept as true the facts alleged in the alien's affidavits in support of reopening. *Id.* However, because the alien had previously had a hearing, the Board was permitted to accept his additional evidence “at face value.” *Id.* Accordingly, the Board did not err in concluding that the alien did not establish prima facie eligibility for relief. The alien's affidavits (if taken as true) supported his claim, but the evidence developed at the prior hearing showed otherwise. *See id.* at 213-14.

## **Tenth Circuit**

*Liying Qiu v. Sessions*, 870 F.3d 1200 (10th Cir. 2017)

The Board denied the alien's motion to reopen finding that the alien had not established changed country conditions affecting Christians in China. *Id.* at 1204. The Board also rejected the statement from the alien's mother regarding the mother's recent religious persecution because the letter was unsworn and prepared for purposes of litigation. *Id.* at 1205. The court found that the Board erred in rejecting the declaration because the alien's mother had expressly stated at the end of her declaration that she was swearing to the truth of the contents. *Id.* The court also found that, even if the Board had been correct, it erred by giving little weight to the document because of its unsworn nature. *Id.* The court noted that this accorded with the findings of the Fourth and Sixth

Circuits, both of which had admonished the Board previously for such action. *Id.* citing *Zuh v. Mukasey*, 547 F.3d 504, 509 (4th Cir. 2008); *Yu Yun Zhang v. Holder*, 702 F.3d 878, 881 (6th Cir. 2012). The court further stated that the Board could not entirely dismiss a declaration as unreliable solely because it was prepared for litigation because there is no legal or logical support for it, particularly since all evidence for an asylum application could otherwise be rejected on that basis. *Id.* at 1206.

## **Eleventh Circuit**

*Fnu Mulyadi v. U.S. Att’y Gen.*, No. 13-14080, 2015 WL 1475948 (11th Cir. Apr. 2, 2015)

The Board denied the alien’s second motion to reopen, finding that he had not established materially changed conditions in Indonesia regarding the treatment of Christians of Chinese ethnicity. *Id.* at \*1–2 (noting that the Board granted little weight to much of the alien’s evidence, “including his own statements, an unsworn and unnotarized letter from his parents, photographs of his father, and his father’s hospital referral slip”). The Eleventh Circuit denied the alien’s petition for review. The court held that the Board was permitted to discount a letter submitted by the alien on the grounds that it was unsworn and from an interested party not subject to cross examination—especially because the alien did not show that notarization would have been difficult or impossible and he did not “corroborate the letter in any meaningful way.” *Id.* at \*3. Regarding the hospital referral slip, the Eleventh Circuit held that Board was entitled to discount the slip because it was an official document that was not authenticated pursuant to the regulations. *Id.* at \*4.

*Mei Ya Zhang v. U.S. Att’y Gen.*, 572 F.3d 1316 (11th Cir. 2009)

The Board denied the alien’s untimely motion to reopen, finding that she had not demonstrated changed country conditions in China. *Id.* at 1317. The Eleventh Circuit granted the alien’s petition for review. The court held that the Board improperly discounted the alien’s personal statement, in which she claimed that her mother had been sterilized, because there was no showing that the statement was inconsistent with the record evidence regarding China’s family planning policies. *Id.* at 1320. The court also held that the Board erred in not considering whether a Village Committee letter submitted by the alien demonstrated changed circumstances in China. *Id.* (indicating that such a letter cannot be entirely discounted solely because of doubts about its authenticity). Finally, the Eleventh Circuit held that the Board “overlooked or inexplicably discounted” other evidence submitted by the alien, such as a directive from the Lianjiang County Guantou Township Committee. *Id.*

*Yaner Li v. U.S. Att’y Gen.*, 488 F.3d 1371 (11th Cir. 2007)

The Board denied the alien’s motion to reopen. *Id.* at 1372. The Eleventh Circuit granted the alien’s petition for review, finding that the Board erred in concluding that the alien had not presented evidence of changed country conditions in China. *See id.* at 1374-75. The court noted that the alien had submitted her own affidavit and an affidavit from her mother in support of her claim that there was a recent campaign of sterilization in her home village. *Id.* at 1375. The court also noted that the Board did not find either of the affidavits to be not credible. *Id.* (criticizing the

Board for not making a “clean” credibility finding where credibility appeared dispositive) (citation omitted). Finally, the court found that the alien’s anecdotal evidence of a change in policy was corroborated by the objective evidence in the record. *Id.* Accordingly, the Eleventh Circuit rejected the Board’s conclusion that the alien had not submitted evidence sufficient to warrant reopening based on changed country conditions. *Id.*