

## **2nd Circuit**

*Latifi v. Gonzales*, 2005 U.S. App. LEXIS 24669 (2d Cir. Nov. 17, 2005) [IJ's adverse credibility determination was erroneous when not based on the whole record and any potential inconsistencies were "insignificant and trivial" not "significant and numerous."]

*Twum v. INS*, 411 F.3d 54 (2d Cir. 2005) [IJ's failure to consider petitioner's claim to reopen proceedings due to failure to comply with *Lozada* was arbitrary when ineffective assistance of counsel was not applicable.]

*Zhang v. Gonzales*, 426 F.3d 540 (2d Cir. 2005) [IJ failed to determine if the persecution was "on account of" any of the protected grounds.]

*Jin Chen v. Gonzales*, 426 F.3d 104 (2d Cir. 2005) [IJ's adverse credibility finding was not supported by substantial evidence where finding that testimony was "scant of details" and "lacking specificity" was incorrect as a matter of law and documents that "appeared fabricated" was grounded solely on speculation and conjecture.]

*Gao v. Gonzales*, 424 F.3d 122 (2d Cir. 2005) [Remand required based on failure of the IJ to analyze imputed political opinion and misstatement of facts by the IJ.]

*Poradisov v. Gonzales*, 420 F.3d 70 (2d Cir. 2005) [IJ's reason for denying asylum were fundamental errors when she disregarded relevant evidence, identified no inconsistencies in testimony, made no adverse credibility finding and failed to consider the cumulative effect of the events.]

## **3rd Circuit**

*Muhanna v. Gonzales*, 399 F.3d 582 (3d Cir. 2005) [IJ's premature decision to halt proceedings based on a flawed frivolousness finding was premature and resulted in a denial of due process]

*Cao v. Gonzales*, 407 F.3d 146 (3d Cir. 2005) [IJ's adverse credibility determination not supported by substantial evidence when she used personal opinion and impermissible speculation and conjecture.]

*Wu v. Ashcroft*, 393 F.3d 418 (3d Cir. 2005) [Remand required to explain IJ's finding that petitioner's testimony was credible, but at the same time the IJ rejected large portions of it and relied on airport statements without explanation.]

*Butt v. Gonzales*, 429 F.3d 430 (3d Cir. 2005) [IJ's adverse credibility determination was erroneous when based on strained inferences to support a finding of contradictions instead of using a commonsense interpretation.]

*Jishiashvili v. Attorney General*, 402 F.3d 386 (3d Cir. 2005) [IJ's adverse credibility determination that evidence was not sufficiently plausible and lacked detail was not supported by substantial evidence.]

#### **4th**

*Camara v. Ashcroft*, 378 F.3d 361 (4th Cir. 2005) [IJ's adverse credibility determination cannot alone preclude protection under the CAT and IJ erroneously overlooked petitioner's other evidence.]

#### **5th**

*Alarcon-Chavez v. Gonzales*, (403 F.3d 343 5th Cir. 2005) [Arbitrary exercise of judicial fiat at the expense of a powerless person to hold that the petitioner failed to appear, where his 20-minute tardiness was only "slight," and the IJ had just left the bench, was still nearby and the arrival was still within business hours. Judges are appointed, not anointed.]

#### **6th**

*Namo v. Gonzales*, 401 F.3d 453 (6th Cir. 2005) [IJ ignored without explanation the arrest warrant and the torture that petitioner suffered when he denied CAT relief.]

*Ahmed v. Gonzales*, 398 F.3d 722 (6th Cir. 2005) [IJ's mischaracterization of testimony was biased and deprived petitioners of due process.]

#### **7th**

*Djouma v. Gonzales*, 429 F.3d 685 (7th Cir. 2005) [Acknowledging the dilemma facing immigration judges in asylum cases, noting that the DHS and DOJ have failed to provide the IJs and the BIA with any systematic guidance on making credibility determinations.]

*Tabaku v. Gonzales*, 425 F.3d 417 (7th Cir. 2005) [Adverse credibility determination overturned where IJ's negative inference of witness failing to testify was improper when IJ failed to call witness and IJ's speculative alternative is overturned since there was no basis in the record.]

*Koval v. Gonzales*, 418 F.3d 798 (7th Cir. 2005) [IJ held petitioner to an impermissibly high standard for establishing persecution and failed to sufficiently develop the record when he refused to consider testimony by a witness.]

*Haile v. Gonzales*, 421 F.3d 493 (7th Cir. 2005) [IJ failed to consider whether denaturalization based on ethnicity amounts to persecution.]

*Soumahoro v. Gonzales*, 415 F.3d 732 (7th Cir. 2005) [IJ failed to make a credibility finding, erred by failing to explain why requiring additional corroboration was reasonable, and by finding that petitioner's events did not rise to the level of persecution.]

*Sahi v. Gonzales*, 416 F.3d 587 (7th Cir. 2005) [IJ contention that unless all members of the group are being persecuted, the person must show that he has been singled out for persecution is untenable.]

*Huang v. Gonzales*, 403 F.3d 945 (7th Cir. 2005) [IJ's adverse credibility determination relied too heavily on personal opinion and information outside of the record, IJ aggressively questioned petitioner and did not allow a response, and the corroboration requested by the IJ was unreasonable.]

*Iao v. Gonzales*, 400 F.3d 530 (7th Cir. 2005) [Six disturbing features common in immigration court decisions: 1) A lack of familiarity with relevant foreign cultures; 2) An exaggerated notion of how much religious people know about their religion; 3) An exaggerated notion of the availability, especially in poor nations, of documentary evidence of religious membership; 4) Insensitivity to the possibility of misunderstandings caused by the use of translators of difficult languages; 5) Reluctance to make clean determinations of credibility; and 6) Affirmances by the BIA either with no opinion or with a very short, unhelpful, boilerplate opinion.]

*Grupee v. Gonzales*, 400 F.3d 1026 (7th Cir. 2005) [IJ failed to explain why petitioner did not establish an objectively reasonable fear of future persecution.]

#### **8th**

*Phommasoukha v. Gonzales*, 408 F.3d 1011 (8th Cir. 2005) [IJ's determination that imprisonment in a concentration camp does not constitute past persecution is not supported by substantial evidence, and therefore, the IJ improperly placed the burden of establishing a well-founded fear of future persecution on petitioner.]

#### **9th**

*Smolniakova v. Gonzales*, 422 F.3d 1037 (9th Cir. 2005) [IJ grossly misconstrued the record; substantial evidence does not support the IJ's adverse credibility finding due to IJ's 'predisposition to discredit' the testimony, rather than any lack of credibility on the part of the witnesses.]

*Recinos-De Leon v. Gonzales*, 400 F.3d 1185 (9th Cir. 2005) [IJ's decision was literally incomprehensible, with incoherent findings and legal standards and with inconsistent statement regarding credibility determinations.]

*Nuru v. Gonzales*, 404 F.3d 1207 (9th Cir. 2005) [IJ's treatment of the petitioner during the hearing was arbitrary and capricious, making highly caustic comments without substance.]

*Biwot v. Gonzales*, 403 F.3d 1094 (9th Cir. 2005) [IJ's denial of a continuance was an abuse of discretion because it was tantamount to denial of counsel.]

*Lopez-Umanzor v. Gonzales*, 405 F.3d 1049 (9th Cir. 2005) [IJ's adverse credibility determination was based on personal opinions that were skewed by prejudice, personal speculation and conjecture.]

*Karouni v. Gonzales*, 399 F.3d 1163 (9th Cir. 2005) [IJ erred in requiring further corroboration to establish the facts when the applicant testified credibly.]

*Quan v. Gonzales*, 428 F.3d 883 (9th Cir. 2005) [IJ's adverse credibility finding was not supported by substantial evidence and IJ's factual findings overlook or significantly understate the treatment petitioner endured.]

**10th**

*Chaib v. Ashcroft*, 397 F.3d 1273 (10th Cir. 2005) [IJ's adverse credibility determination was based on speculation and not supported by substantial evidence in the record.]

**11th**

*Antipova v. Ashcroft*, 392 F.3d 1258 (11th Cir. 2004) [IJ erred in failing to find persecution because petitioner could have tried to hide her practice of Judaism, therefore avoiding persecution.]