

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHIEN CHIU TSAI,	:	
	:	
Petitioner,	:	
	:	CIVIL ACTION NO. 3:CV-03-2412
v.	:	
	:	
JOHN ASHCROFT, et al.,	:	(JUDGE CAPUTO)
	:	
Respondents.	:	

**MEMORANDUM**

Presently before the Court is Magistrate Judge Malachy E. Mannion’s Report and Recommendation. (Doc. 2.) Magistrate Judge Mannion recommends that I dismiss the Petition for Writ of Habeas Corpus (Doc. 1) and direct the INS<sup>1</sup> to treat the petition as a request for administrative review under 8 C.F.R. § 241.4. Based on the following, I will reject the Report and Recommendation because Petitioner has exhausted his administrative remedies.

In *Zadvydas v. Davis*, the United States Supreme Court held that when an alien has been held in post-removal detention for at least six months and "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the Due Process Clause requires that the government respond with evidence to rebut that showing. 533 U.S. 678, 701 (2001). After *Zadvydas*, the United States District Court for the Middle District of Pennsylvania dismissed outstanding petitions for writs of habeas corpus without prejudice on the basis that the Attorney General created interim procedures to treat habeas petitions as requests for

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<sup>1</sup> The Court notes that the INS is no longer in existence. Petitioner is in the custody of the Bureau of Immigration and Customs Enforcement (hereinafter ICE), the successor to the INS.

administrative review. See *Chan v. Ashcroft*, Civ. A. 3:01-264, (M.D. Pa. Aug. 23, 2001); see also *Singh v. INS*, Civ. A. 3:01-1485 (M.D. Pa. Nov. 2, 2001).<sup>2</sup> Magistrate Judge Mannion based his present recommendation on the precedents of *Chan* and *Singh*. However, in *Chan* and *Singh*, the petitioners filed their original petitions prior to the *Zadvydas* opinion.

In the present case, Petitioner filed his petition well after the *Zadvydas* opinion. In his petition, he states that he exhausted his administrative remedies by requesting review under the post-*Zadvydas* regulation 8 C.F.R. § 241.13. (Doc. 1 at 4-5.) Because Petitioner states in his petition that he availed himself of the administrative procedures, there is no procedure which permits the Court to remand this matter to ICE. Petitioner has also stated in his petition that he has cooperated fully with the ICE's attempts to obtain travel documents to remove Petitioner to China, but the Chinese government is refusing to issue the necessary documents. (Doc. 1 at 6-7.) I will permit the petition to go forward according to ordinary procedures, and I will issue an Order to Show Cause to the Respondents.

An appropriate Order follows.

\_\_\_\_\_  
May 11, 2004  
Date

\_\_\_\_\_  
A. Richard Caputo  
United States District Judge

\_\_\_\_\_  
<sup>2</sup> In cases in which the petitioner filed the petition after *Zadvydas*, the Court has dismissed the petition for failure to exhaust administrative remedies, without instructing the INS to treat the petition as a request for administrative review. See, e.g., *Verissimo v. Ashcroft*, Civ. A. 3:03-0547 (M.D. Pa. May 9, 2003).

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Now this 11th day of May, 2004, upon review of Magistrate Judge Malachy

E. Mannion's Report and Recommendation (Doc. 4), **IT IS HEREBY ORDERED THAT:**

- (1) The Report and Recommendation is hereby **REJECTED**.
- (2) Respondents will show cause by **May 14, 2004**, why Petitioner's petition for writ of habeas corpus should not be granted.
- (3) A hearing shall be conducted on **May 19, 2004, at 2:00 p.m.** in a courtroom to be determined, William J. Nealon Federal Building & United States Courthouse, 235 North Washington Avenue, Scranton, Pennsylvania.

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A. Richard Caputo  
United States District Judge

FILED 5/11/04