

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

<b>LIN FENG</b>	:	<b>No. 04-CV-1101</b>
	:	
<b>v.</b>	:	
	:	
<b>UNITED STATES ATTORNEY</b>	:	
<b>GENERAL JOHN ASHCROFT</b>	:	

**MEMORANDUM OPINION AND ORDER**

**Rufe, J.**

**June 22, 2004**

This Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 comes to the Court on Petitioner Lin Feng’s Objections to Magistrate Judge Charles B. Smith’s April 15, 2004 Report and Recommendation (“R&R”).

Petitioner, a native of the People’s Republic of China (“China”), was convicted in state court of aggravated assault, simple assault, criminal conspiracy, reckless endangerment, and possessing an instrument of a crime. Petitioner was sentenced to nine (9) to twenty-three (23) months incarceration, to be followed by five (5) years of probation. After Petitioner was paroled, the Bureau of Immigration and Custom Enforcement (“BICE”) detained him pending removal proceedings. On October 28, 2003, an Immigration Judge ordered Petitioner removed to China. Petitioner thereafter waived his appeal rights, making the deportation order final.

On January 22, 2004, after review of Petitioner’s custody status, the BICE denied Petitioner’s request for release on bond for failure to show that he was not a flight risk and was not a threat to society. On March 15, 2004, Petitioner filed the instant Petition for a Writ of

Habeas Corpus on the ground that his continued detention violates his constitutional rights under Zadvydas v. Davis, 533 U.S. 678 (2001).<sup>1</sup>

On April 15, 2004, Magistrate Judge Smith recommended that the Petition for Writ of Habeas Corpus be denied. In his R&R, Magistrate Judge Smith correctly noted that under Zadvydas a petitioner must demonstrate that there is “no significant likelihood of removal.” Magistrate Judge Smith stated that this burden is usually met in four types of cases: (1) where no country will accept the detainee; (2) where the detainee’s country of origin refuses to issue a travel document; (3) where there is no removal agreement between the country of origin and the United States; and (4) where there is no definitive answer from the target country after several months as to whether it will issue travel papers.<sup>2</sup> Magistrate Judge Smith found that none of these circumstances exists in this case. Further, he found that by not surrendering his Chinese passport Petitioner was partially responsible for the delay in the removal process. Magistrate Judge Smith therefore concluded that it was not clear that removal was not “reasonably foreseeable” and recommended that the Petition be denied without prejudice.

Petitioner filed timely Objections to the R&R, disputing Magistrate Smith’s factual finding that Petitioner willfully prevented his removal. Petitioner also argues that under Zadvydas the detention period in this case—which exceeds 6 months—is presumptively

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<sup>1</sup> In Zadvydas, the Supreme Court held that executive branch power over deportation is subject to constitutional limitations and that indefinite detention of aliens is impermissible. The Court ruled that the Immigration and Naturalization Service (now known as the BICE) was not authorized to detain non-citizens subject to final removal once removal was no longer “reasonably foreseeable.” Id. at 699. The Court ruled that a 6-month period of detention was presumptively reasonable, but that the 6-month presumption “does not mean that every alien not removed after six months must be released.” Id. at 701. To the contrary, “an alien may be held in confinement until it has been determined that there is no significant likelihood of removal.” Id.

<sup>2</sup> R&R at 5-6 (citing Nma v. Ridge, 286 F. Supp. 2d 469 (E.D. Pa. 2003)).

unreasonable. Finally, Petitioner contends that Magistrate Judge Smith erred in concluding that he was a flight risk. In its Response to Petitioner’s Objections, the Government argues that the Zadvydas court merely ruled that extending the detention for the purpose of deportation of an alien for up to 6 months is “presumptively reasonable”—not that a period in excess of 6 months is *per se* unreasonable.<sup>3</sup> The Government asserts that Magistrate Judge Smith correctly concluded that Petitioner failed to meet his burden of proving that there is no significant likelihood of removal in the reasonably foreseeable future.

Upon review of the record, this Court finds Magistrate Judge Smith properly analyzed the legal issues before him. As set forth in the R&R, the magistrate judge noted that Petitioner entered the United States with a passport but despite repeated requests has not surrendered it to BICE officials.<sup>4</sup> Magistrate Judge Smith further concluded that the government of China generally issues travel documents to citizens that have recently (in their adult years) entered the United States and are found to be removable.<sup>5</sup>

Petitioner has not met his burden under Zadvydas because he has failed to establish that his deportation to China is not reasonably foreseeable. Moreover, the Government has represented to the Court in its Response to the Objections that “[i]mmigration authorities are making active efforts to obtain travel documents” for Petitioner.<sup>6</sup> Accordingly, the Court

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<sup>3</sup> Gov’t’s Resp. to Pet.’s Objections at 3 (citing Zadvydas, 533 U.S. at 701).

<sup>4</sup> R&R at 7.

<sup>5</sup> Id. at 6.

<sup>6</sup> Gov’t’s Resp. to Pet.’s Objections at 6.

approves and adopts the R&R and denies the Petition for Writ of Habeas Corpus without prejudice to Petitioner's right to re-file his Petition for Habeas Corpus Relief if he is not removed from the United States within ninety (90) days of the date of this Memorandum Opinion and Order.

An appropriate Order follows.

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	:	
<b>UNITED STATES ATTORNEY</b>	:	
<b>GENERAL JOHN ASHCROFT</b>	:	

**ORDER**

AND NOW, this 22nd day of June, 2004, it is hereby ORDERED and DECREED

as follows:

(1) Petitioner Lin Feng's Objections to the Report and Recommendation [Doc. No. 15] are OVERRULED;

(2) Magistrate Judge Charles B. Smith's Report and Recommendation dated June 24, 2003 [Doc. No. 14] is APPROVED and ADOPTED;

(3) The Petition for a Writ of Habeas Corpus [Doc. No. 1] is DENIED WITHOUT PREJUDICE;

(4) There is no probable cause to issue a Certificate of Appealability; and

(5) The Clerk shall CLOSE this case for statistical purposes.

**BY THE COURT:**

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**CYNTHIA M. RUFÉ, J.**

