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

JOHN NURGEN WONLAH, Petitioner, v. DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, Respondent.	: : : : : : : : :	CIVIL ACTION No. 04-1832

MEMORANDUM AND ORDER

J. M. KELLY, J. **JANUARY 3, 2005**

Presently before the Court is a Petition for Writ of Habeas Corpus ("Petition") filed by John Nurgen Wonlah ("Wonlah"), a Liberian native, who is subject to a final order of removal from the United States for having been convicted of an aggravated felony.[1] Wonlah seeks review of the Board of Immigration Appeals' (the "BIA") decision. The BIA's decision upheld the Immigration Judges's (the "IJ") decision denying his request for asylum and a withholding of removal pursuant to the Immigration and Nationality Act (the "INA"), 8 U.S.C. §§ 1158 and 1231(b)(3), and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Convention Against Torture"), 23 I.L.M. 1027 (1984), as modified, 24 I.L.M. 535 (1985). Having considered Wonlah's Petition and its supplement, Respondents' Response and Wonlah's two Replies thereto, for the following reasons, Wonlah's Petition

[1] Respondent is the Department of Homeland Security's Immigration and Customs Enforcement Division ("Respondent").

for Writ of Habeas Corpus is **DENIED**.

I. BACKGROUND

Wonlah is a native and citizen of Liberia. He worked as an automobile mechanic in Liberia from 1970 to 1974. In 1974, he came to the United States to study on a scholarship and married a United States citizen. He has not returned to Liberia since 1986. Wonlah testified that he continued to work as a mechanic in the United States until he suffered a spinal injury sometime in 2000.

In November of 1991, Wonlah was arrested in Philadelphia, Pennsylvania and charged with attempted burglary in violation of 18 Pa. C.S.A. § 3502.[2] Wonlah pleaded not-guilty to the attempted burglary charge. On April 30, 1992, a jury for the Court of Common Pleas in Philadelphia County, Pennsylvania, found Wonlah guilty of attempted burglary. (Phila. C.P. No. 9112-0599-600.)[3] He was then sentenced to 11 and 1/2 to 23 months in county prison. On May 7, 1993, the Pennsylvania Superior Court

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[2] Wonlah was also charged with Theft by Unlawful Taking or Disposition, Attempted Theft by Receiving Stolen Property, and Possession of an Instrument of Crime in violation of 18 Pa. C.S.A. §§ 3921, 3925, and 907, respectively. These charges, however, were dismissed.

[3] While the date of conviction is inconsequential to this decision, the IJ noted in his Interlocutory Oral Decision that the charging document listed July 22, 1992, not April 30, 1992, as the date Wonlah was convicted of attempted burglary. (I.J. Interlocutory Oral Dec. at 1.)

affirmed the conviction. Commonwealth v. Wonlah, 631 A.2d 219 (Pa. Super. Ct. 1993). The Pennsylvania Supreme Court denied Wonlah's request for discretionary review on December 8, 1993. Commonwealth v. Wonlah, 637 A.2d 283 (Pa. 1993).

On July 25, 2000, Immigration and Customs Enforcement ("ICE") issued Wonlah a Notice to Appear, alleging that he was removable from the United States as an aggravated felon due to his attempted burglary conviction. At a hearing before the IJ, Wonlah asserted the following four reasons why he was not removable: 1) he was not an aggravated felon;[4] 2) he was eligible to seek relief by filing for asylum;[5] 3) he was eligible to seek relief by filing for withholding of removal under the INA;[6] and

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[4] "Aggravated Felonies" are defined in § 101(a)(43) of the INA. Section 101(a)(43)(G) defines aggravated felony as "a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [was] at least one year." 8 U.S.C. § 1101(a)(43)(G).

[5] Section 208 of the INA provides, in pertinent part, that "the Attorney General may grant asylum to an alien who has applied for asylum . . . if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title." 8 U.S.C. § 1158(b)(1).

Section 208(b)(2)(A)(ii), however, does not allow asylum for an alien who has "been convicted by a final judgment of a particularly serious crime." 8. U.S.C. 1158(b)(2)(A)(ii). Furthermore, § 208(b)(2)(B)(i) states that "an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime." 8 U.S.C. § 1158(b)(2)(B)(i).

[6] Section 241(b)(3) of the INA provides, in pertinent part:

4) he was eligible to seek withholding of removal relief under the Convention Against Torture on account of conditions in his native Liberia.[7] The IJ found that Wonlah was removable under § 237(a)(2)(A)(iii) of the INA as an aggravated felon based on his attempted burglary conviction. As an aggravated felon, the IJ found that Wonlah was ineligible to seek asylum under the INA.

> the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1231(b)(3).

Section 241(b)(3), however, does not apply to a deportable alien if the Attorney General decides that the alien has "been convicted by a final judgment of a particularly serious crime." 8 U.S.C. § 1231(b)(3)(B).

[7] The Convention Against Torture provides, in pertinent part:

> 1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
>
> 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Convention Against Torture, Art. III., 23 I.L.M. 1027, 1028 (1984) and 24 I.L.M. 535 (1985).

In considering Wonlah's claim requesting withholding of removal relief under the INA and the Convention Against Torture, the IJ found that Wonlah failed to sustain his burden of proof. In making this determination, the IJ found that Wonlah failed to show that it is more likely than not that he would be tortured if returned to Liberia. The IJ stated that "the Court cannot find a scintilla of evidence that would reflect that it is more likely than not that the respondent would be persecuted if he returns to his country or I cannot find that the respondent's fears are subjectively or objectively genuine." (IJ Decision at 8.)

On May 23, 2003, the BIA affirmed the decision of the IJ, finding that Wonlah may not seek relief via asylum on account of his status as an aggravated felon. Further, the BIA affirmed the IJ's finding that Wonlah failed to meet his burden of proof for withholding of removal relief under the INA and the Convention Against Torture.

On April 28, 2004, Wonlah filed the instant pro se Petition for Writ of Habeas Corpus requesting, inter alia, injunctive relief. That same day, this Court granted Wonlah temporary injunctive relief and enjoined the Government from removing Wonlah from the United States until further order of this Court. Having granted injunctive relief, we now review the remainder of Wonlah's Petition seeking habeas relief.

II. JURISDICTION AND STANDARD OF REVIEW

Although jurisdiction is not contested in this matter, it is well-established that, even after passage of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 110 Stat. 1214, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), 110 Stat. 3009-546, this Court has jurisdiction under 28 U.S.C. § 2241 to decide habeas petitions filed by criminal aliens subject to deportation. Chmakov v. Blackman, 266 F.3d 210, 213 (3d Cir. 2001) (citing Zadvydas v. Davis, 533 U.S. 678 (2001) and INS v. St. Cyr, 533 U.S. 289 (2001) ("Both the Supreme Court and this Court have determined that notwithstanding the provisions of AEDPA or IIRIRA, district courts retain jurisdiction to hear habeas petitions filed by aliens subject to deportation for having committed certain criminal offenses.")). However, this Court's review of administrative immigration decisions of the BIA is limited to purely legal determinations and does not encompass the BIA's discretionary or factual determinations. Sulaiman v. Attorney General, 212 F. Supp. 2d 413, 416 (E.D. Pa. 2002) (DuBois, J.); Chinchilla-Jimenez v. INS, 226 F. Supp. 2d 680, 683 (E.D. Pa. 2002) (Baylson, J.); see also Catney v. INS, 178 F.3d 190, 195 (3d Cir. 1999) (acknowledging that AEDPA and IIRIRA preclude review of discretionary relief, and that criminal aliens must challenge the BIA's interpretation, or constitutionality, of

immigration laws on habeas); Gutierrez-Chavez v. INS, 298 F.3d 824, 827 (9th Cir. 2002) (holding that § 2241 does not allow, in absence of constitutional or statutory error, second-guessing of Immigration and Nationalization Service's exercise of discretion); Sol v. INS, 274 F.3d 648, 651 (2d Cir. 2001) (holding that § 2241 provides for review of only "statutory or constitutional errors"); Goncalves v. Reno, 144 F.3d 110, 125 (1st Cir. 1998) (holding that § 2241 permits consideration of "the pure statutory question" raised by petitioner).

III. DISCUSSION

Wonlah's Petition consists of four pro se briefs. Throughout the four briefs, Wonlah attacks many of the factual predicates the IJ either relied upon or concluded. After careful review of each of these four briefs, it is clear that we cannot review most of what Wonlah wishes us to review. As discussed above, we are only permitted to review questions of law. We, therefore, cannot consider Wonlah's challenge of his 1992 attempted burglary conviction.[8]

[8] Wonlah couches several factual arguments as legal. For example, he argues that the IJ did not allow him to submit important documentary evidence that would allegedly impact his status for asylum under the INA and withholding under the Convention Against Torture. Such a claim would seem to raise concerns that his due process rights were denied. As enunciated by the Supreme Court, the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Mathews v. Eldridge, 424 U.S. 319, 333

Moving beyond the factual arguments, we now piece together the legal arguments from Wonlah's four briefs. In doing so, the only issue before this Court is whether the IJ's or the BIA's decision to deny Petitioner asylum or withholding from removal pursuant to the INA and the Convention Against Torture violated the Constitution or the laws of the United States. Accordingly, this Court construes Wonlah's Petition as challenging that: 1) the BIA failed to apply the correct legal standard pertaining to asylum; and 2) the BIA and the IJ failed to apply the correct legal standard pertaining to withholding of removal under § 241(b)(3) of the INA and the Convention Against Torture.[9] We address each of Wonlah's legal arguments in turn.

(1976). However, in the first and fourth of his briefs (Doc. Nos. 3 and 11), Wonlah attaches the documents that he claims the IJ did not allow him to submit into evidence. The documents are newspaper articles that relate to the Commonwealth of Pennsylvania Judge who presided over his attempted burglary conviction and the police officer who arrested him. Wonlah seeks to introduce the articles to challenge his 1992 conviction. The IJ was within his discretion to deny submission of the articles as he was not in a position to overturn Wonlah's attempted burglary conviction.

[9] Wonlah makes a third argument that he is entitled to discretionary waiver of deportation under § 212(h) of the INA. 8 U.S.C. § 1182(h). However, § 212(h) of the INA provides discretionary waiver from deportation only for individuals who have committed a "single offense of simple possession of 30 grams or less of marijuana." Id. As Wonlah's prior conviction was for attempted burglary, not possession of marijuana, he is not eligible for discretionary waiver of deportation under INA § 212(h).

A. Wonlah's Eligibility for Asylum

The BIA held that Wonlah was statutorily ineligible for asylum because of Wonlah's prior conviction for attempted burglary. (B.I.A. Dec. at 1.) Wonlah contends that the BIA incorrectly disqualified him from being able to receive asylum under the INA. Asylum is available to aliens who meet certain conditions set forth by the United States Attorney General. See 8 U.S.C. § 1158(b)(1). One condition is that aggravated felons are ineligible for asylum. See Id. at § 1158(b)(2)(B)(i).

Appealing that decision, Wonlah argues that his attempted burglary conviction does not constitute an aggravated felony. Wonlah is incorrect. The INA includes in the definition of aggravated felony "a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year." Id. at § 1101(a)(43)(G). Section 101(a)(43)(U) of the INA includes "an attempt . . . to commit an offense described in [8 U.S.C. § 1101(a)(43)]" as an aggravated felony. See Id. at § 1101(a)(43)(U). Reading these to provisions together we see that attempted burglary is clearly defined as an aggravated felony by the INA.

Wonlah's asylum argument places great weight on the "at least one year" imprisonment language of the INA. Wonlah argues that he was not sentenced to "at least one year." Rather, he was

sentenced to 11 and 1/2 to 23 months for his attempted burglary conviction and never served any time in prison. Wonlah argues his attempted burglary conviction does not meet the statutory minimum of "at least one year" and is, therefore, not an aggravated felony.

In making this argument, Wonlah misinterprets the "at least one year" language in § 101(a)(43)(G) of the INA. Section 101(a)(43)'s one year term of imprisonment requirement refers to the maximum term for an indeterminate sentence. Bovkun v. Ashcroft, 283 F.3d 166, 170-71 (3d Cir. 2002). Whereas under Pennsylvania law, the minimum term imposed merely sets forth the earliest a prisoner may be paroled. Id. (quoting Rogers v. Pennsylvania Bd. of Probation & Parole, 724 A.2d 319, 321 n.2 (Pa. 1999)). Accordingly, Wonlah's sentence of 11 and 1/2 months to 23 months meant that 11 and 1/2 months was the minimum term. After 11 and 1/2 months Wonlah would become eligible for parole, but should parole be repeatedly denied, he would not serve more than 23 months. Wonlah's sentence is the functional equivalent of being sentenced to 23 months of imprisonment. See Id. The Court, therefore, should treat Wonlah's sentence for present purposes as if it were a simple sentence of 23 months. This means Wonlah was actually sentenced to a term of more than one year.

As Wonlah was sentenced to an indeterminate term of 11 and

1/2 to 23 months for his attempted burglary conviction the Court finds that the record sufficiently supports the BIA's conclusion that Wonlah is an aggravated felon not eligible for asylum in the United States. The BIA applied the correct legal standard in denying Wonlah asylum under the INA.

B. Wonlah's Eligibility for Withholding of Removal Under the INA

Wonlah argues that the BIA failed to apply the correct legal standard pertaining to withholding of removal under § 241(b)(3) of the INA. See 8 U.S.C. § 1231(b)(3)(A). This withholding of removal section does not allow the United States Attorney General to remove an alien to a country if he or she finds that the alien's "life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group or political opinion." 8 U.S.C. § 1231(b)(3)(A). However, withholding of removal protections are not available to an alien who has been convicted "by a final judgment of a particularly serious crime." 8 U.S.C. § 1231(b)(3)(B)(ii). Accordingly, before being able to analyze the merits of the BIA's decision, we must first determine whether Wonlah is precluded from receiving withholding of removal relief due to his attempted burglary conviction.

Respondent argues Wonlah's attempted burglary conviction is a "particularly serious crime" that bars withholding relief under

the INA. There is one crucial difference between the definition of a "particularly serious crime" for INA § 241(b)(3) purposes and the definition of "aggravated felony" for asylum purposes. The definition of a "particularly serious crime" includes an aggravated felony "for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years." 8 U.S.C. § 1231(b)(3)(B). Wonlah's sentence for his aggravated felony was for 23 months, far short of the 5 year imprisonment minimum imposed by the statutory definition of a "particularly serious crime." Wonlah's attempted burglary conviction, therefore, was not a "particularly serious crime" and he is not precluded from arguing for withholding of removal.

C. Withholding Relief Under the INA and the Convention Against Torture

Wonlah contends that the BIA failed to apply the correct legal standards when it denied him withholding relief under § 241(b)(3) of the INA and the Convention Against Torture, 24 I.L.M. 535.[10] Specifically, Wonlah argued to the BIA that the

[10] Wonlah also argues that the IJ erred in withdrawing a "deal" that would have granted withholding of removal privileges consistent with INA § 241(b)(3) even though he was not otherwise qualified for this relief. When Wonlah did not immediately accept the offer, the IJ withdrew the "deal." The BIA determined that this offer was ultra vires because an IJ may not offer a "deal" to an alien who does not otherwise qualify for relief from removal. For present purposes of determining whether Wonlah is eligible for withholding of removal under INA § 241(b)(3), the

IJ's credibility determination underestimated Wonlah's importance to Liberia's then-President, Charles Taylor.[11] This Court will construe Wonlah's claim for withholding relief as a legal challenge under 8 C.F.R. §§ 208.16(b) and 208.16(c)(3). These federal regulations govern the eligibility standard for withholding relief under the INA and the Convention Against Torture. See Sulaiman, 212 F.Supp. 2d at 417 (construing petitioner's claim that BIA's denial of withholding of removal violated Convention Against Torture as legal challenge under 8 C.F.R. § 208.16(c)(3)). Both regulations place the burden of proof on the applicant for withholding of removal. See 8 C.F.R. § 208.16. Therefore, Wonlah had to establish that it is more likely than not that he would be tortured or persecuted if removed to Liberia. See id.

In assessing whether it is "more likely than not" that the

"deal" is irrelevant because it was illusory. The IJ's offer was never accepted by Wonlah.

[11] In his briefs, Wonlah focuses almost exclusively on former Liberian President Charles Taylor. Taylor abdicated his position as President of Liberia in August of 2003, Wonlah's focus now seems inappropriate. In order to be eligible for relief under the Convention Against Torture, the torture must be by or with the acquiescence of a public official. See 8 C.F.R. §§ 208.18, 1208.18; Cano-Merida v. INS, 311 F.3d 960, 965-66 (9th Cir. 2002) (BIA properly denied motion to re-open proceedings before IJ where there was no evidence that government official consented or acquiesced). Taylor was removed from the Liberian government in August of 2003. Therefore, Wonlah's fear of reprisal from Taylor appears to be moot for Convention Against Torture purposes.

applicant would be tortured in the country of removal for Convention Against Torture purposes, "all evidence relevant to the possibility of future torture shall be considered . . . ." Id. at § 208.16(c)(3).[12] For INA purposes, since Wonlah's fear of returning to Liberia is premised on "future threat to life or freedom," he had the burden of proving it is "more likely than not" that the applicant would be "persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country." See id. § 208.16(b)(2).

After reviewing the IJ's proceedings transcript, the BIA adopted the IJ's ruling that Wonlah lacked credibility and failed to present sufficient evidence that it was more likely than not that he would be tortured or persecuted upon removal to Liberia. (B.I.A. Dec. at 1-2.) Specifically, the BIA found Wonlah un-credible because Wonlah presented no evidence of membership in

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[12] The evidence that must be considered shall include, but is not limited to:

(i) Evidence of past torture inflicted upon the applicant;
(ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;
(iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and
(iv) Other relevant information regarding conditions in the country of removal.

8 C.F.R. § 208.16(c)(3).

any group that would put him at risk or why his lack of support for then-President Charles Taylor would make it more likely than not that he would be persecuted or tortured in Liberia. (Id. at 2.)

The BIA's opinion denying Wonlah withholding relief is two paragraphs long. (Id. at 1.) Wonlah claims this abbreviated review was insufficient under the federal regulations governing application of withholding relief. While this Court may not second-guess the BIA's factual determinations, we may review whether the BIA applied the correct legal standard to those factual determinations. In evaluating whether the BIA complied with 8 C.F.R. § 208.16, the United States Court of Appeals for the Third Circuit has held that the BIA is not required to "address explicitly each type of evidence," but that the BIA need only "show that it has reviewed the record and grasped the movant's claims." Sevoian v. Ashcroft, 290 F.3d 166, 178 (3d Cir. 2002). In Sevoian, the Third Circuit determined that it was permissible action for the BIA to credit the State Department's report more than other evidence when it denied an applicant withholding relief. Id.

Here, the BIA's decision explicitly acknowledged its review of the evidence Wonlah presented to the IJ. After this review, the BIA made the same credibility determination as the IJ. To that end, we conclude that the BIA not only reviewed the record,

but also grasped Wonlah's claim that his relationship with then-President Charles Taylor allegedly made it more likely than not removal to Liberia would result in oppression or torture. The BIA, like the IJ, disagreed with Wonlah. Accordingly, this Court concludes that, as a matter of law, the BIA's consideration of the evidence in support of Wonlah's withholding of relief claim was proper.[13]

Wonlah's appeal, however, argues that the IJ's, not the BIA's, credibility determination was incorrect. After hearing Wonlah's testimony regarding the danger allegedly awaiting him in Liberia, the IJ determined that Wonlah was not credible. An adverse credibility determination by the IJ should be supported by specific, cogent reasons for the disbelief in petitioner's testimony. Balasubramanrim v. INS, 143 F.3d 157, 161-62 (3d Cir. 1998). As it appears the BIA adopted the IJ's ruling and analysis without conducting a de novo review of the record, we shall review the credibility determination of the IJ under a substantial evidence standard. Id. This means that we will uphold findings "to the extent that they are 'supported by

[13] Wonlah's claim that the BIA failed to examine important exculpatory newspaper articles regarding his attempted burglary conviction is misplaced. Wonlah asks this Court to consider newspaper articles allegedly showing his attempted burglary conviction was illegally obtained. The BIA correctly did not consider this evidence when making its withholding determination, nor shall this Court. Wonlah's allegations that he was illegally convicted are irrelevant to a determination of whether his life or freedom would be threatened in Liberia.

reasonable, substantial, and probative evidence on the record considered as a whole.'" Balasubramania, 143 F.3d at 161 (quoting INS v. Elias-Zacarias, 502 U.S. 478 (1992)).

Here, there is substantial evidence to support the IJ's adverse credibility finding. The IJ spent a large portion of its nine page decision discussing Wonlah's evidence and testimony offered to secure withholding relief under the INA and the Convention Against Torture. The thrust of Wonlah's argument was that he would be tortured upon removal to Liberia because Liberia's then-President Charles Taylor, through several seemingly tangential and un-corroborated connections, was aware of Wonlah's condemnation of him. The IJ determined that Wonlah had "blown out of proportion his importance in the eyes of Charles Taylor and also his importance with the community of Liberians living in the United States." (IJ Dec. at 7). Finding Wonlah's lack of credibility was further supported by the fact that Wonlah had not been back to Liberia since 1986 and that Wonlah could not recall the names of the organizations in which he claimed membership. The IJ concluded that there was not even a "scintilla of evidence that would reflect that it was more likely than not that [Wonlah] would be persecuted if he returns to his country." (Id. at 8).

The IJ's opinion set forth more than adequate justification based on substantial evidence for its conclusion that Wonlah is

not entitled to withholding relief under the INA and the Convention Against Torture. The IJ addressed the relevant evidence offered by Wonlah and made its decision based on that evidence. The IJ offered specific, cogent reasons why Wonlah lacked credibility and why Wonlah had not proven that it was more likely than not that he would be persecuted or tortured upon removal to Liberia. Therefore, Wonlah's Constitutional and statutory rights were not violated when the IJ and the BIA denied his application for withholding relief under the INA and the Convention Against Torture.

IV. CONCLUSION

For the foregoing reasons, Wonlah's Petition for Writ of Habeas Corpus is **DENIED**. Further, this Court's April 28, 2004 order, which granted Wonlah's request for temporary injunctive relief and stayed his removal from the United States until further order of this Court, is **VACATED**.

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

JOHN NURGEN WONLAH, Petitioner,	:	CIVIL ACTION
v.	:	
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, Respondent.	:	No. 04-1832

O R D E R

AND NOW, this 3rd day of January, 2005, in consideration of the Petition for Writ of Habeas Corpus filed by Petitioner John Nurgen Wonlah ("Wonlah"), Wonlah's Supplemental Brief (Doc. No. 6), the Government's Response (Doc. No. 8), and Wonlah's Replies thereto (Doc. Nos. 9 and 11), it is **ORDERED**:

1. Wonlah's Petition for Writ of Habeas Corpus (Doc. No. 3) is **DENIED**; and

2. This Court's April 28, 2004 Order (Doc. No. 2) temporarily staying Wonlah's removal from the United States is **VACATED**.

BY THE COURT:

/s/

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JAMES McGIRR KELLY, J.