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

ABOU GNOKANE	:	CIVIL ACTION
	:	
v.	:	
	:	
JOHN ASHCROFT, et al.	:	No. 04-5243
	:	
	:	

MEMORANDUM

Baylson, J. **April 28, 2005**

Before the Court is a petition for habeas corpus filed pursuant to 28 U.S.C. §2241 by Abou Gnokane, seeking relief from deportation on the grounds that he was denied due process of law by his attorney's ineffective assistance and by his failure to receive notice of the Board of Immigration Appeals' ("BIA") affirmance of the Immigration Judge's ("IJ") denial of his asylum application.

I. Background

Abou Gnokane is a native and citizen of Mauritania who arrived in New York on October 22, 1997, and entered the United States without valid travel documents. On June 29, 1998, Gnokane filed an application for asylum, alleging persecution inflicted upon him by the government of Mauritania and its agents due to his race and membership in a particular social group. According to the application, Gnokane's family's land, cattle, and other belongings were confiscated and the family was detained by soldiers and forcibly deported to Senegal, where Gnokane remained for five years before coming to the United States.

On July 30, 1998, the Immigration and Naturalization Service initiated removal proceedings against Gnokane by issuing a Notice to Appear, served on Gnokane on August 6, 1998, which stated that Gnokane was deportable because he entered the United States without a

valid entry document and ordered Gnokane to appear in the New York City Immigration Court on August 28, 1998. The record is unclear as to what, if any, further proceedings occurred in 1998, but it is clear that at some point in 1998 or 1999 an Asylum Officer found Gnokane to be a refugee and referred the case to an Immigration Judge on the grounds of changed country conditions in Mauritania.

In a hearing held at the New York City Immigration Court on July 15, 1999, Immigration Judge Paul A. Defonzo (the "IJ") denied Gnokane's applications for asylum, withholding of removal, and voluntary departure, and ordered Gnokane removed to Senegal. Gnokane was represented at the hearing by Eric Wuestman of the Law Office of Attorney Ronald Salomon.

On August 16, 1999, Gnokane's counsel filed a "Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge" ("EOIR-26") and checked Item #6 of the form, indicating that a separate written brief or statement would be filed. The EOIR-26 states that an appeal may be summarily dismissed by the BIA if Item #6 indicates an intention to file a separate written brief or statement and no such brief or statement is filed within the time set for filing.

In a notice dated August 2, 2000, Ronald Salomon was informed that Gnokane was granted until September 1, 2000 to submit the brief to the BIA. No brief was filed, and on July 22, 2002, the BIA affirmed without opinion the IJ's denial of Gnokane's asylum application. Salomon has stated by way of an affirmation dated August 26, 2004 and signed by Salomon, that he never received notice of the BIA's decision and the government does not dispute this.

According to Gnokane, he was unaware of the BIA's decision until the renewal of his Employment Authorization Document was denied. At a hearing on this petition held on

February 7, 2005, a document was submitted to the Court by Assistant United States Attorney Viveca D. Parker that indicating that the denial notice regarding the Employment Authorization Document was sent to Gnokane on December 2, 2002. Gnokane alleges that when he received the notice of the denial, he sought an explanation from Salomon, who told Gnokane he would research the matter.

According to Gnokane, having not heard from Salomon, he retained the services of Kimberly Rudolph, Esq., sometime in late 2003, who discovered the outcome of the BIA decision and informed both Gnokane and Salomon that the BIA had affirmed the IJ's order. As mentioned previously, Salomon's affirmation states that neither Salomon nor Gnokane had received notice of the BIA's decision. It also corroborates Gnokane's allegations regarding Ms. Rudolph's involvement.

On or about July 31, 2004, Gnokane was detained by immigration authorities and held at York County Prison, in York, Pennsylvania. On November 10, 2004, Gnokane filed this counseled petition for habeas corpus pursuant to 28 U.S.C. §2241, challenging his deportation from the United States on the grounds that he was denied due process of law (1) because his attorney's failure to submit a brief in support of his appeal to the BIA constituted ineffective assistance of counsel, and (2) because the failure to receive notice of the BIA decision deprived him of an opportunity to file a timely Motion to Reconsider with the BIA and/or a Petition for Review to the Circuit Court. Gnokane also asserted his U.S. citizen's wife right to seek adjustment of his immigration status based on their marriage on October 8, 2004, performed during Gnokane's detention.

On November 10, 2004, this Court issued an order enjoining the United States and its

various departments, including Respondents, from deporting Gnokane until further order of the Court.

On November 18, 2004, Gnokane was released on bond, based on a decision apparently made by the authorities prior to the filing of Gnokane's habeas petition and motivated by immigration officials' inability to get the Mauritanian Consulate's cooperation in obtaining travel documents for Gnokane so that he could be removed to Senegal.

On December 10, 2004, the Government filed its opposition to Gnokane's petition, and on December 27, 2004, Gnokane filed a reply brief.

After his release from detention, Gnokane's U.S. citizen wife filed a I-130 petition to the Department of Homeland Security, requesting adjustment of Gnokane's status based on their marriage. At the February 7, 2005 hearing before this Court, Gnokane's counsel stated that the filing of the I-130 petition at the Vermont Service Center was acknowledged by a receipt issued on December 27, 2004, and a copy of that receipt has been submitted to the Court. (Petitioner's Supplemental Brief, Exhibit 15).

At the time Gnokane filed his habeas petition, he had not yet complied with the BIA's procedural requirements for ineffective assistance of counsel claims in immigration proceedings as set forth in Matter of Lozada, 19 I. & N. 637 (BIA 1988). Lozada requires (1) that an affidavit be filed attesting to the relevant facts, including to the agreement entered into with counsel; (2) that the former counsel is confronted with the allegations and given an opportunity to respond; and (3) that a complaint is filed with the disciplinary authorities of the state bar or reasons are given for the failure to do so. Id.

Gnokane's Supplemental Brief includes exhibits which indicate that it was not until

February 3, 2005, that Ms. Rudolph sent a letter to Mr. Salomon, notifying him of the charges against him and requesting a response within ten days. (Petitioner's Supplemental Brief, Exhibit 13). According to the petitioner, Mr. Salomon failed to respond, and Ms. Rudolph filed a complaint to the Departmental Disciplinary Committee, Supreme Court, Appellate Division, First Judicial Department of New York, dated February 14, 2005. (Petitioner's Supplemental Brief, Exhibit 13).

Having fulfilled the Lozada requirements, perhaps belatedly, Ms. Rudolph filed a Motion to Reopen to the BIA on February 17, 2005, requesting that the BIA reopen Gnokane's case and remand it "to the Immigration Court to reconsider the merits of his asylum application and/or allow Mr. Gnokane an adjustment of status hearing due to the hardship his deportation would cause to his U.S. citizen wife and stepchildren." (Petitioner's Supplemental Brief, Exhibit 14, Motion to Reopen, p. 14).

At the conclusion of the February 7, 2005 hearing, this Court requested that counsel supply additional briefing as to whether, and how, Gnokane's pending application for adjustment of status based on his marriage to a U.S. citizen might affect these proceedings. On February 18, 2005, Gnokane filed a Supplemental Brief, in which he requests that this Court grant his habeas petition and order the BIA to reopen and remand his case for adjudication of his adjustment of status application. The Supplemental Brief reasserts Gnokane's ineffective assistance of counsel claim, as well as the claim that the BIA's failure to provide notice of its decision to Gnokane or to Salomon deprived Gnokane of "1) the ability to file a Petition for Review to the circuit court; 2) his ability to filed a Motion to Reconsider to the BIA, and 3) his ability to file a Motion to Reopen his case for adjustment of status based on marriage to his then-fiancee Taabu Porter."

(Petitioner's Supplemental Brief, p. 6). Gnokane relies on In Re Velarde-Pacheco, 23 I & N Dec. 253 (BIA 2002), in which the BIA held that, under certain circumstances, a timely motion to reopen for adjustment of status based on a marriage entered into after the commencement of immigration proceedings may be granted in the exercise of the BIA's discretion. Thus, Gnokane argues, had he known of the BIA's decision, he could have married his then-fiancee and filed a timely Motion to Reopen on the basis of that marriage, which the BIA might have granted under In Re Velarde-Pacheco.

On March 14, 2005, the government filed its response, arguing that this Court does not have jurisdiction to remand the matter, because the decision whether to grant a motion to reconsider or to reopen proceedings is discretionary to the Attorney General, and because habeas jurisdiction is limited to pure questions of law. Bakhtriger v. Elwood, 360 F.3d 414, 420 (3d Cir. 2004). The government also contends that Gnokane's belated compliance with the procedural requirements for establishing ineffective assistance of counsel claims cannot cure his failure to have done so at the time the habeas petition was filed.

Additionally, the government argued in its initial response to the petition that the Field Operations Director of the Bureau of Immigration and Customs Enforcement is the only proper respondent in this matter under Rumsfeld v. Padilla, 124 S. Ct. 2711 (2004).

II. Jurisdiction

The Court must first consider whether it may properly exercise jurisdiction over this matter. In Chmakov v. Blackman, 266 F.3d 210 (3d Cir. 2001), the Third Circuit was faced with facts similar in many respects to those presently before the Court. The Chmakovs' counsel had failed to file an appeal brief with the BIA or to appeal the BIA's decision to the circuit court.

The district court determined that it lacked jurisdiction over the Chmakov's habeas petition challenging their removal. The Third Circuit reversed, holding that federal district courts have jurisdiction over habeas petitions alleging ineffective assistance of counsel because Congress has not explicitly stated an intention to preclude such habeas review. Id. at 216. On remand, the district court was directed to consider the Chmakovs' constitutional claim and decide if the counsel's failure to file the brief with the BIA or to appeal the BIA's decision "render[ed] the proceedings so fundamentally unfair that [the Chmakovs'] were prevented from reasonably presenting their case." Id.

The Chmakov case differs from the case before the Court, however, because the aliens in Chmakov had filed a motion to reopen and for reconsideration with the BIA alleging ineffective assistance of counsel, and it was only after the denial of this motion that the Chmakovs filed their habeas petition in the district court. Here, although Gnokane apparently became aware of the BIA's decision in late 2003 when he retained Ms. Rudolph, he never filed a motion to reopen or for reconsideration, and instead, waited until he was detained in July 2004, and then filed this habeas petition.

The government therefore argues in its initial opposition to the petition for habeas corpus that this Court should not exercise jurisdiction over Gnokane's petition because Gnokane has not exhausted his administrative remedies by failing to file a motion to reopen or to reconsider to the BIA. The government relies on a non-precedential Third Circuit opinion which states that a habeas petitioner alleging ineffective assistance of counsel who has not filed a motion to reopen with the BIA "would still have to exhaust administrative remedies with respect to the ineffective assistance of counsel claim by filing a motion to reopen with the Board prior to proceeding in

federal district court." Gaur v. Ashcroft, 65 Fed. Appx. 773, 776 (3d Cir. 2003)(not precedential)(citing Hernandez v. Reno, 238 F.3d 50, 55 (1st Cir. 2001)). The petitioner in Gaur, however, was not facing imminent deportation.

The Hernandez case cited in Gaur distinguishes between the "ordinary case" in which the alien "must use the Board's own procedures to resolve his competency of counsel claims" and cases where the alien "is threatened with immediate deportation." Hernandez, 238 F.3d at 55. In Hernandez, the alien had filed a petition to reopen with the BIA, but the BIA had not acted on it for over three years. The court decided to address the merits of the case because "[u]nder these circumstances, to await further action by the Board would, on the one hand, frustrate Congress' plain intent to expedite deportation of aggravated felons, and, on the other, risk deporting Hernandez without giving him an opportunity to make his constitutional objection in court." Id. (citations omitted).

Additionally, the First Circuit made it clear in Hernandez that the decision whether to exercise jurisdiction over such claims is at the discretion of the district court: "[T]o the extent that the Board does provide currently available remedies as a matter of grace, a court is free to require exhaustion of such remedies – not because of any jurisdictional objection or statutory command but simply because it makes sense." Id. (citing McCarthy v. Madigan, 503 U.S. 140 (1992)). Therefore, pursuant to Hernandez, while the district court is free to decline jurisdiction on the grounds that administrative remedies should be exhausted by filing a motion to reopen with the BIA, it is not required to do so. In Hernandez, the First Circuit suggested the following approach:

Absent a threat of immediate deportation, a district court should in general decline

> to entertain a habeas petition challenging competency of counsel. Even if such a threat impends, the respondent still ought to show good cause why he has not previously sought a discretionary stay of deportation, as well as reopening, from the Board. However, unless rigidly prescribed by statute, exhaustion may be excused where there is reason to do so.

Id. at 55.

Judge Caldwell of the Middle District of Pennsylvania has considered Gaur and Hernandez in a similar context and likewise concluded that if removal is imminent, the court should consider the claim on the merits, but that the choice to do so is at the district court's discretion:

> Additionally, Petitioner still has an administrative remedy available; he can move the Board to reopen the proceedings under its sua sponte power to do. *See* 8 C.F.R. § 3.2(a); *see also* Gaur v. Ashcroft, 65 Fed. Appx. 773, 776 (3d Cir. 2003)(nonprecedential). However, this remedy is discretionary with the Board, Gaur, supra, 65 Fed. Appx. at 776, and as a discretionary remedy, it does not preclude our jurisdiction. See Hernandez v. Reno, 238 F.3d 50, 55 (1st Cir. 2001)(cited in Gaur). Depending on the circumstances, we may entertain the claim or require [Petitioner] to return to the Board. Id. Because Petitioner faces imminent removal, we will consider the claim on the merits. Id.

Milosevic v. Ridge, 301 F. Supp. 2d 337, 345 (M.D. Pa. 2003).

Here, Gnokane became aware of the BIA's decision in late 2003, but he had still not filed a motion to reopen when he was detained in July 2004. At the February 7, 2005 hearing, Ms. Rudolph explained this delay as due to the failure of Mr. Salomon to forward Gnokane's file to her. As mentioned previously, before filing a motion to reopen to the BIA, the requirements for ineffective assistance of counsel claims set forth in Lozada needed to be fulfilled – including a complaint being made to the disciplinary authorities – and Ms. Rudolph felt obliged to review Gnokane's file prior to pursuing such action. Ms. Rudolph alleges that, due to Mr. Salomon's failure to respond to her requests, she filed a FOIA request for Gnokane's file in January 2004

and only received the file in June 2004, just weeks before Gnokane was detained.

This Court finds, from the above facts, that Gnokane has provided a reasonable explanation for his failure to exhaust his administrative remedies prior to his detention, and as deportation was imminent when Gnokane filed this petition, the Court will exercise jurisdiction over the petition. The Court therefore turns to Gnokane's claims that the ineffective assistance of counsel and lack of notice of the BIA's decision violated his due process rights.[1]

III. Ineffective Assistance of Counsel Claim

As mentioned previously, Gnokane had not completed the BIA's requirements for ineffective assistance of counsel claims in immigration proceedings at the time this petition was filed. The Lozada requirements, however, are a gatekeeping device the BIA has established for its consideration of these claims, and these requirements are not binding on the courts. As the Third Circuit has stated, "[t]here are inherent dangers . . . in applying a strict, formulaic interpretation of Lozada." Lu, 259 F.3d at 133. The Third Circuit is particularly "concerned that courts could apply Lozada's third prong [which requires a bar complaint to be filed] so strictly that it would require all petitioners claiming ineffective assistance to file a bar complaint [because] Lozada explicitly allows petitioners to provide a reasonable explanation for *not* filing a complaint." Id. Here, Gnokane delayed filing a bar complaint, but he has offered a reasonable explanation – his attorney wanting to wait to receive his file through her FOIA request prior to filing such a complaint – for his delay in doing so. And the Third Circuit has explicitly stated

[1]The government cites Bakhtriger v. Elwood, 360 F.3d 414 (3d Cir. 2004), for the proposition that this Court does not have jurisdiction over these claims because they involve factual determinations. Bakhtriger, however, simply "limit[s] criminal alien habeas petitions to constitutional challenges or errors of law." Id. at 425. Here, Gnokane, who is not a criminal alien, raises constitutional claims regarding alleged violations of his due process rights.

that "the failure to file a complaint is *not* fatal if a petitioner provides a reasonable explanation for his or her decision." Id. at 134.

Still, a due process violation has not occurred unless his prior attorney's ineffective assistance prevented Gnokane from reasonably presenting his case and this failure prejudiced Gnokane's case. Ponce-Leiva v. Ashcroft, 331 F.3d 369, 378 (3d Cir. 2003)(quoting Uspango v. Ashcroft, 289 F.3d 226, 231 (3d Cir. 2002)).[2] Gnokane's petition argues that his ability to reasonably present his case was prevented by Salomon's failure to file a brief in support of his appeal to the BIA, which allowed the BIA to summarily affirm the IJ's decision without considering the merits. The government argues that, regardless of whether Salomon filed the supporting brief to the BIA, Gnokane has not provided any evidence or arguments that could have supported a reversal of the IJ's decision. Indeed, nowhere in his filings to this Court does Gnokane present any evidence or arguments to support the conclusion that the BIA's decision regarding his asylum claim would have been otherwise if Salomon had filed the supplemental brief, and thus he has not shown that the fate of his asylum application was prejudiced by Salomon's failure to do so.

IV. Lack of Notice of BIA's decision

Perhaps aware of this, in his Supplemental Brief, Gnokane clarifies that his petition currently relies on the following arguments: "First, the government violated his right to due

[2]Although immigration proceedings are civil proceedings that do not implicate the Sixth Amendment guarantee of effective counsel, "petitioners in deportation proceedings enjoy Fifth Amendment Due Process protections." Lu v. Ashcroft, 259 F.3d 127, 131 (3d Cir. 2001). A due process violation occurs when an attorney's assistance renders "the proceedings so fundamentally unfair that [the alien is] prevented from reasonably presenting [his] case." Chmakov, 266 F.3d at 210.

process when it failed to provide him with notice that his appeal to the [BIA] was denied . . . thereby depriving him of all remedies he could have utilized to preserve his status in the United States. In addition, Mr. Gnokane's right to effective counsel was violated when his former attorney . . . failed to effectively and diligently represent him in his immigration proceedings, specifically failing to notify Mr. Gnokane of the dismissal of his appeal. This violation of Mr. Gnokane's right to due process again deprived him of all remedies available to him." (Petitioner's Supplemental Brief, p. 2).

Thus, Gnokane's petition is now based on the argument that the lack of notice of the BIA's decision violated his due process rights by depriving him of the opportunity to pursue the remedies available to him – specifically, to timely file a Petition for Review to the Third Circuit, a Motion to Reconsider to the BIA, or a Motion to Reopen for Adjustment of Status based on marriage to a U.S. citizen.[3] The government has not disputed Gnokane's and Salomon's allegations that neither received notice of the BIA's decision.

Generally, due process "requires that the alien be provided with notice of proceedings and an opportunity to be heard." In re G-Y-R-, 23 I. & N. 181 (BIA 2001). In order to comply with the requirements of due process as to notification of its decisions, the BIA need only comply with its own regulations. Gaur, 65 Fed. Appx. at 774. The applicable regulations provide that: "The decision of the Board shall be in writing and copies thereof shall be transmitted by the Board to the Service and a copy shall be served upon the alien or party affected as provided in Part 292 of

[3]As mentioned previously, the argument regarding the Motion to Reopen relies on the premise that if Gnokane had known of the BIA's decision when it was rendered, Gnokane would have married his then-fiancee, applied for adjustment of status, and then filed a motion to reopen to the BIA on the basis of that application.

this chapter." 8 C.F.R. § 3.1(f). Section 292.5(a) provides for the decision to be mailed to the attorney of record if the individual is represented by counsel. 8 C.F.R. §292.5(a). Here, no evidence has been submitted that the BIA ever mailed its decision to Salomon.[4]

Along with generally providing the alien with notice of the proceedings, 8 C.F.R. § 3.1(f) specifically "protects the alien's right to petition [the Court of Appeals] for review." Lara-Torres v. Ashcroft, 383 F.3d 968, 976 (9th Cir. 2004). Due to the circumstances of this case, this Court finds that the Board's failure to provide such notice of the decision to Salomon precluded Gnokane from filing a timely petition for review to the Third Circuit, and from discovering that Salomon had failed to file a brief in support of his appeal and pursuing any other remedies available before the BIA in a timely manner. When Gnokane discovered the outcome of the BIA's decision in late 2003, he theoretically could have pursued these remedies at that time, on the grounds that they should be deemed timely because of the lack of notice,[5] but he apparently had no way to surmise at that time that Salomon had not received notice from the BIA, so he reasonably sought the fulfillment of the Lozada requirements in pursuit of his ineffective assistance of counsel claim instead.

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[4]In cases in which the government disputes lack of notice claims, it has provided evidence such as the transmittal letter that accompanied the Decision and contemporaneous notations made in the BIA's computer system indicating that the Decision was mailed on a certain date. Radkov v. Ashcroft, 375 F.3d 96, 98 (1st Cir. 2004). No such evidence was provided to this Court. The BIA might want to consider a more specific procedure, such as certified mail with a return receipt, to avoid litigation over lack of notification.

[5]Although timely motions to reopen must be filed no later than 90 days after the date on which the final administrative decision was rendered, 8 C.F.R. §1003.2, when there are exceptional circumstances, such as lack of notice or ineffective assistance of counsel, the BIA may grant motions to reopen that are untimely. See, e.g., Danu v. Ashcroft, 2005 WL 23366 *3 (3d Cir. Jan. 6, 2005).

This Court therefore finds that, under the facts of this case, the Board's failure to comply with the regulations regarding service of notice of its decisions violated Gnokane's due process rights. As such, the matter will be remanded to the BIA so that the Board can consider Gnokane's Motion to Reopen. Nothing in this opinion should be read, however, as expressing an opinion as to the merits of any claims Gnokane has made or may make before the BIA as to the denial of his asylum claim or his eligibility for adjustment of status based on his marriage to a U.S. citizen. For example, while Gnokane did not present evidence to this Court that Salomon's ineffective assistance of counsel prejudiced the adjudication of his asylum application, he may elect to attempt to present such evidence to the BIA; this Court makes no ruling at this time as to what action the BIA should take.

Neither should this opinion be read to dictate how the Board should exercise its discretion to grant or to deny Gnokane's Motion to Reopen. The BIA's discretion regarding motions to reopen is such that "[t]he Board has discretion to deny a motion to reopen even if the party moving has made out a prima facie case for relief." 8 C.F.R. §1003.2(a).

V. Proper Respondent

When Gnokane filed the petition before the Court, he was incarcerated at the request of the Philadelphia District Office of Immigration and Customs Enforcement of the United States Department of Homeland Security, located in the Eastern District of Pennsylvania. The government asserts that the Field Operations Director of Immigration and Customs Enforcement, Thomas Decker, is the only proper respondent in this matter under Rumsfeld v. Padilla, 124 S. Ct. 2711 (2004), and asks that the other respondents be dismissed from the case.

Judge Kelly was recently faced with the same argument from the government and chose

not to decide the issue on the following grounds:

> The Government proffers Thomas Decker, the Philadelphia Acting Field Office Director, as the proper respondent. The identity of the proper respondent to a petition for writ of habeas corpus by an alien in removal proceedings is not a settled question of law. The United States Supreme Court left the question of whether the Attorney General is the proper respondent to a deportable alien's petition open in Ahrens v. Clark, 335 U.S. 188 (1948), and the Courts of Appeals have subsequently reached differing conclusions on the issue. Rumsfeld v. Padilla, 124 S. Ct. 2711 (2004). As Padilla dealt with a petitioner in military custody, the Court declined to resolve the discrepancy in that decision. Id. Since the Third Circuit has not weighed in on this issue and Mr. Ashcroft has responded to the petition on the merits, I will also decline to decide the question.

Arriola-Arenas v. Ashcroft, 2004 WL 2517924 (E.D. Pa. Nov. 8, 2004). The Court similarly declines to decide the question here, as the government has responded to Gnokane's case on the merits.

An appropriate order follows.

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

ABOU GNOKANE	:	CIVIL ACTION
	:	
v.	:	
	:	
JOHN ASHCROFT, et al.	:	No. 04-5243
	:	
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ORDER

AND NOW this 28th day of April, 2005, upon consideration of the Petition for Writ of Habeas Corpus (Docket No. 1), and the responses thereto, it is hereby ORDERED that this matter is REMANDED to the Board of Immigration Appeals for further proceedings consistent with this Memorandum and Order.

It is also ORDERED that this matter should be placed in SUSPENSE pending the Board of Immigration Appeals' issuance of a decision; counsel should file a report as to the status every six months, jointly if possible, separately if necessary.

It is further ORDERED that the Court's November 10, 2004 Order enjoining removal of the Petitioner continues in effect until further order of this Court.

The Clerk is directed to close this case for statistical purposes.

BY THE COURT:

/s/ Michael M. Baylson
Michael M. Baylson, U.S.D.J.