

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HINES-ROBERTS :
 :
 v. : No. 3:02cv253 (SRU)
 :
 ASHCROFT :

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

Kevin Hines-Roberts is a native and citizen of Jamaica, who entered the United States in December 1986. Hines-Roberts brings this petition for a writ of habeas corpus on the ground that his state drug convictions do not constitute removable offenses within the meaning of the Immigration and Nationality Act (“INA”). Hines-Roberts further alleges that the Immigration and Naturalization Service’s (“INS”) interpretation of Connecticut General Statute 21a-279(a), which makes it a crime to possess illegal drugs, violates the Equal Protection Clause; and that the INS’s decision not to terminate the removal proceedings and to hold him in custody pending removal violates his due process rights.

For the reasons set forth below, Hines-Roberts’ petition is DENIED.

BACKGROUND

Hines-Roberts entered the United States as an immigrant in December 1986. On June 2, 1997, Hines-Roberts was convicted of possession of a controlled substance, in violation of Connecticut General Statutes § 21a-279(c), and was sentenced to a \$150 fine. On April 28, 1998, Hines-Roberts was convicted of possession of narcotics, in violation of Connecticut General Statutes, section 21a-

279(a). He was sentenced to three years' imprisonment. That sentence was later suspended to three years' probation. On October 6, 1998, Hines-Roberts was convicted in Connecticut state court of the use of a motor vehicle without permission, in violation of Connecticut General Statutes, section 53a-119b(a), and was sentenced to one year's concurrent imprisonment. He was later sentenced to two years' imprisonment after the revocation of probation imposed following his April 1998 conviction for possession of narcotics. On January 11, 2000, Hines-Roberts was convicted of possession of a controlled substance, in violation of Connecticut General Statutes, section 21a-277(b).

On March 24, 2000, the INS initiated deportation proceedings against Hines-Roberts. On September 5, 2000, he was taken into INS custody. On September 19, 2000, he was transferred to the federal detention center in Oakdale, Louisiana.

On October 16, 2000, Hines-Roberts appeared before an immigration judge ("IJ") in Oakdale, Louisiana for removal proceedings. The hearing was continued to November 14, 2000, and later, to December 22, 2000. At the December 22 hearing, the IJ gave Hines-Roberts the opportunity to file for discretionary cancellation of removal relief under section 240A of the INA. On January 26, 2001, Hines-Roberts submitted the application at a hearing before the IJ. At a subsequent hearing held on April 25, 2001, the IJ denied Hines-Roberts' application for cancellation of removal under section 240A on the ground that Hines-Roberts' conviction for possession of narcotics qualified as a drug trafficking crime under the Controlled Substances Act ("CSA"), 21 U.S.C. § 844(a), and thus, Hines-Roberts was barred from section 240A relief as an aggravated felon.

On January 24, 2002, the Board of Immigration Appeals ("BIA") also concluded that Hines-Roberts was statutorily ineligible for cancellation of removal relief under section 240A. The BIA noted

that Connecticut’s definition of the term “narcotic substance” was consistent with the federal definition of that term, and that Hines-Roberts’ “second possession offense is analogous to a crime that is punishable as a felony under federal drug laws and therefore qualifies as a drug trafficking crime.” Decision of the BIA, Jan. 24, 2002.

Hines-Robertsss filed this petition on February 11, 2002 in the District of Connecticut.

JURISDICTION

Under Title 28, section 2241 of the United States Code, federal courts have jurisdiction to review habeas petitions involving purely legal questions. Henderson v. INS, 157 F.3d at 120 n.10. Here, the court is not “called upon ... to review the agency's factual findings or the Attorney General's exercise of his discretion,” but rather, to determine whether Hines-Roberts was statutorily eligible for deportation relief. Id. (citing Goncalves v. Reno, 144 F. 3d at 125 (distinguishing between eligibility for discretionary relief – a legal question – and the “discretionary component of the administrative decision whether to grant relief.”)). Because Hines-Roberts has exhausted the available administrative remedies, and his petition raises a purely legal challenge to his final order of removal, this court has subject matter jurisdiction to review his habeas petition.

DISCUSSION

Eligibility for Section 240A Cancellation of Removal

Prior to the IJ’s April 25, 2001 decision denying him cancellation of removal relief, Hines-Roberts accumulated one state conviction for possession of narcotics (April 28, 1998) and two state

convictions for possession of a controlled substance (June 2, 1997 and January 11, 2000). The IJ determined that, based on these convictions, Hines-Roberts was an aggravated felon and statutorily ineligible for cancellation of removal relief.

In this petition, Hines-Roberts seeks an order enjoining his removal from the United States on the ground that his state drug convictions do not constitute removable offenses within the meaning of the INA. Hines-Roberts contends that the Connecticut drug schedules are broader than the federal schedules, and thus, may include substances that would not give rise to an aggravated felony conviction under federal law.

Even though the record does not state or describe the controlled substance underlying his second and third state drug convictions, Hines-Roberts may still be considered an aggravated felon. Under 21 U.S.C. § 802, an “aggravated felony” includes drug trafficking crimes, as defined in section 924(c)(2) of Title 18. See 8 U.S.C. § 1101(a)(43)(B). A “drug trafficking crime” is broadly defined to include “any felony punishable under the Controlled Substances Act (“CSA”), 21 U.S.C. § 801 et seq.” See 18 U.S.C. § 924(c)(2).

Section 844(a) of the CSA provides that “one prior conviction for any drug, narcotic, or chemical, offense chargeable under the law of any State” exposes the defendant to a maximum term of two years’ imprisonment. If the defendant possesses two or more prior narcotics convictions, then he is exposed to a maximum term of three years’ imprisonment. Under federal law, an offense punishable by a term of imprisonment in excess of one year, is considered a felony. See 18 U.S.C. § 3559(a); see also Connecticut General Statutes § 21a-243(f) (“In the event of any inconsistency between the contents of schedules I, II, III, IV, and V of the controlled substance scheduling regulations and

schedules I, II, III, IV, and V of the federal Controlled Substances Act, as amended, the provisions of the federal act shall prevail.”).

In light of his June 1997 state drug conviction, Hines-Roberts’ second and third state drug convictions qualify as felonies under the CSA. Because Hines-Roberts’ second and third state drug convictions qualify as drug trafficking crimes under the CSA, he is considered an aggravated felon, and thus, is statutorily ineligible for a cancellation of removal under section 240A. See INS v. St. Cyr, 533 U.S. 289, 297 (2001) (noting that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 gives the Attorney General the authority to cancel removal for a narrow class of inadmissible or deportable aliens, including aggravated felons).

Equal Protection Claim

Hines-Robertsss also challenges his removal on the ground that the INS’s decision not to terminate his removal violated his rights under the Fifth Amendment.¹ Specifically, Hines-Roberts argues that his circumstances are similar to those of the petitioner in Matter of Lawrence, File No. A41-649-124. In Lawrence, the BIA terminated removal proceedings against the petitioner because the INS had not presented clear and convincing evidence that “the substance involved in the

¹ Hines-Roberts’ petition states that “if his case is not terminated then his right under the Equal Protection Clause of the Fifth Amendment to the United States Constitution is in violation.” Unlike the Fourteenth Amendment, the Fifth Amendment does not contain a clause providing for equal protection of the laws. However, it is well settled that “the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive.” Bolling v. Sharpe, 347 U.S. 497, 499 (1954). Accordingly, Hines-Roberts’ claim, as it applies to a federal agency, arises under the Due Process Clause of the Fifth Amendment.

respondent's conviction is a 'controlled substance.'" BIA Decision, Sept. 18, 2001.

The circumstances of this case are wholly distinguishable from that in Matter of Lawrence. Although no substance was identified in the record pertaining to Hines-Roberts' April 1998 conviction for possession of narcotics, under the CSA, his multiple state drug convictions render him an aggravated felon, ineligible for deportation relief. Accordingly, Hines-Roberts' claim lacks merit and is denied.

Due Process Claim

Hines-Roberts also challenges his removal on the ground that his detention prior to removal violates the Due Process Clause of the Fifth Amendment. Although the Supreme Court has recognized that an unreasonable detention may implicate an alien's due process rights, see Zadvydas v. Davis, 533 U.S. 678 (2001), Hines-Roberts' detention does not raise any due process concerns. Under section 1231(a)(2), the Attorney General may detain an alien during the removal period for a reasonable length of time. See 8 U.S.C. § 1231(a)(2). Under Zadvydas, the Fifth Amendment limits the government's authority to detain aliens under 8 U.S.C. § 1231(a) to a period reasonably necessary to bring about that alien's removal from the United States. Zadvydas, 533 U.S. at 699. Under the Supreme Court's analysis, detention of up to six months is a presumptively reasonable length of time in which the government may work towards the alien's removal. Id. at 680. Beyond six months, an alien's due process rights are compromised if there is no significant likelihood of deportation in the reasonably foreseeable future.

Here, a stay of deportation was issued by the court on February 21, 2002. As a result of that

stay, the Attorney General could not seek to bring about Hines-Roberts' deportation. Accordingly, Hines-Roberts' period of detention does not raise the due process issue presented in Zadvydas. Hines-Roberts' post-final order detention to date is appropriate and does not give rise to a violation of his rights under the Fifth Amendment.

CONCLUSION

For the reasons stated above, Hines-Roberts' petition for writ of habeas corpus is DENIED. The stay of deportation entered in this case is hereby vacated. The clerk shall close the file.

It is so ordered.

SO ORDERED this _____ day of June 2003 at Bridgeport, Connecticut.

Stefan R. Underhill
United States District Judge