UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PRECIOUS BANKHOLE, Petitioner	:	
v.	:	3:02-CV-00702 (EBB)
IMMIGRATION and NATURALIZATION SERVICE, Respondent	:	

RULING ON PETITION FOR HABEAS CORPUS

Petitioner is a native and citizen of Nigeria. She was admitted to the United States in 1972 as the spouse of a non-immigrant student and her status was adjusted to that of lawful permanent resident in 1984. On June 6, 1996, Petitioner was convicted in the United States District Court for the Eastern District of Virginia of: (1) conspiracy to commit money laundering; (2) perjury; and (3) obstruction of justice. She was sentenced to 63 months in prison. Her conviction was affirmed by the Court of Appeals for the Fourth Circuit.

As a result of these convictions, Respondent instituted removal proceedings against Petitioner. She conceded her removability and sought asylum, cancellation of removal under the Immigration and Nationality Act ("INA"), § 240(A), family hardship relief, withholding of removal under INA § 241(B)(3), and withholding of removal under the Convention Against

Torture.[1]/

The Immigration Judge found that she was not eligible to remain in the United States on any ground and his decision was upheld by the Board of Immigration Appeals on April 30, 2002.

Petitioner's initial reason for nonremovability is that her mandatory detention pursuant to INA § 236(c), 8 U.S.C. § 1226(c), violates her Fifth Amendment rights. The claim has been mooted because Petitioner has a final order of removal against her by virtue of the Board's April 30, 2002 order. Accordingly, her detention is governed by 8 U.S.C. § 1231(a), INA § 241(a).

The Board has determined that mandatory detention of criminal aliens prior to an administratively final decision is governed by 8 U.S.C. § 1226(c) whereas detention of aliens after a final order is governed by 8 U.S.C. § 1231 (a). Matter of Joseph, Int. Dec. 3387, 1999 WL 271357 (BIA 1999)(en banc). *Accord* Zadvydas v. Davis, 122 S. Ct. 2491 (2001).

Because she now has a final order of removal, Petitioner no longer is being detained under the statute she seeks to have declared unconstitutional. "[T]he hallmark of a moot case or controversy is that the relief sought can no longer be given or

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[1]/ In enacting the Convention against Torture, Congress specially wrote that the Convention is not a self-executing treaty. As such, a federal court has no general federal jurisdiction to entertain such a claim. See Columbia Marine Services, Inc. v. Reffet, Ltd., 861 F.2d 18, 21 (2d Cir. (1988)(treaty must be "self-executing" in order to support federal question jurisdiction pursuant to 28 U.S.C. § 1331); Dreyfus v. Von Finck, 534 F.2d 24, 29 (2d Cir. 1976)(same). Resultingly, this Court may not consider Petitioner's claim under the Convention Against Torture.

is no longer needed." Martin-Trigona v. Schiff, 702 F.2d 380, 386 (2d Cir. 1983). Accordingly, there is no longer a case or controversy before this Court on the detention issue, as the relief she seeks can no longer be given.

Petitioner next seeks cancellation of her removal under INA § 240(a). Pursuant to this statute, entitled "Cancellation of Removal; adjustment of status", this section applies to an alien who:

> (1) has been an alien lawfully admitted for permanent residence for not less than five years:
>
> (2) has resided in the United States continuously for 7 years after having been admitted in any status; and
>
> (3) has not been convicted of any aggravated felony.

INA § 204A(a), 8 U.S.C. § 1229b (2000).

The immigration judge properly found that Petitioner was ineligible for cancellation of removal because she had been convicted of an aggravated felony. This is supported by INS v. St. Cyr, 533 U.S. 289 (2001)(cancellation of removal unavailable to all aliens convicted of aggravated felonies and not just those imprisoned for more than five years).

Petitioner next sought withholding of removal pursuant to INA § 241 (b)(3), 8 U.S.C. § 1231 (b)(3). Like the asylum statute, the withholding of removal statute provides that an alien convicted of a particularly serious crime is ineligible for

withholding of removal. The only difference in the withholding of removal statute is that the alien must have been sentenced to a term of imprisonment greater than five years for an aggravated felony conviction. Here, as the Immigration Judge noted, Petitioner has been sentenced to imprisonment for 63 months, thereby disqualifying her from withdrawal of removal. The Court holds that this was the proper finding, as a matter of law.

Finally, the Immigration Judge properly concluded that Petitioner was not eligible for family hardship relief, inasmuch as she had been convicted of an aggravated felony. *See* INA § 212(h), 8 U.S.C. § 1182(h). In Jankowski-Burczyk v. INS, 291 F.3d 172 (2d Cir. 2001), the Second Circuit found that lawful permanent aliens convicted of aggravated felonies are ineligible for Section 212 (h) relief and that prohibiting such relief to those aliens while allowing it to non-lawful permanent aliens did not violate equal protection. *See also* Custodio v. INS, 2002 WL 1608329 at *1 (D.Conn. June 28, 2002)(CFD); Barton v. Ashcroft, 2002 WL 1603134 at *1 (D.Conn. June 24, 2002)(GLG).

As to Petitioner's claim for ineffective assistance of counsel, such claim must be brought before the Board initially. Inasmuch as Petitioner had not exhausted her administrative remedies, the Court will not entertain this claim.

For each of the reasons set forth herein, the Petition for Habeas Corpus [Doc. No. 1] is hereby DENIED. The Clerk is

directed to close this case.

SO ORDERED

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ELLEN BREE BURNS
SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this _____ day of August, 2002.