

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RAFAELA MERCEDES
GOMEZ-DE LEON, :
 :
 Petitioner, :
 :
 V. : CASE NO. 3:03CV01654 (RNC)
 :
 JOHN ASHCROFT, :
 Attorney General of the :
 United States, :
 :
 Respondent. :

RULING AND ORDER

Petitioner Rafaela Gomez-De Leon is a native and citizen of the Dominican Republic. As a result of her conviction for an aggravated felony, an Immigration Judge ordered her removal in April 2000. The Board of Immigration Appeals upheld this order in October 2000. Petitioner then filed a petition for habeas relief pursuant to 28 U.S.C. § 2254. In April 2002, after extensive review, the district court dismissed her petition, and in August 2003, the Second Circuit Court of Appeals affirmed the district court's ruling. On September 29, 2003, petitioner filed this habeas corpus petition, requesting a new hearing for compassionate relief from removal, along with release from custody in order to visit the Social Security Administration. On the same day, petitioner was removed to the Dominican Republic. For the reasons stated below, her petition is dismissed.

Under 8 U.S.C. § 1252(d), a court may review a final order of

removal only if another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order. Here, petitioner has already filed one habeas petition, which has been ruled on by both a district court and the Second Circuit Court of Appeals. The issue she raises in this habeas petition, her entitlement to a "compassionate hearing," is one she certainly could have raised in the earlier habeas petition. Therefore, she cannot raise that issue in a second habeas petition.¹

Petitioner's request for a temporary release from custody in order to visit the Social Security Administration has been mooted by her removal to the Dominican Republic.

Accordingly, the petition is hereby dismissed.

So ordered.

Dated at Hartford, Connecticut this ____ day of October 2003.

¹ Petitioner requests a "compassionate hearing" under Beharry v. Reno, 183 F. Supp. 2d 584 (E.D.N.Y. 2002). Even if she were not barred from bringing this petition by 8 U.S.C. § 1252(d), petitioner has not pleaded in her petition any facts that would suggest that she meets the extremely stringent standards for a special hearing under the decision in that case, which requires, inter alia, that petitioner have been convicted of a crime that was defined as an aggravated felony only after the crime was committed.

Robert N. Chatigny
United States District Judge