

United States District Court
EASTERN DISTRICT OF WISCONSIN

JOCELYN ISADA BOLANTE
Petitioner,

v.

Case No. 08-CV-698

GLENN TRIVELINE, et al.,
Respondents.

COURT MINUTES

HONORABLE CHARLES N. CLEVERT, JR., PRESIDING

Date: September 3, 2008

Type of Proceeding: Motions Hearing

Time Commenced: FTR Start 10:12:42 a.m.

Time Concluded: FTR End 11:27:38 a.m.

Court Reporter: None Law Clerk: Ben Proctor

Appearances: Petitioner: Attorney Linda M Babich

Respondents: Assistant United States Attorneys Lennie Lehman and Lisa Warwick

Disposition: Case dismissed for lack of jurisdiction pursuant to 8 U.S.C. §
1252. All pending motions terminated.

Notes: Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §§ 2241, 1651.

In addition, before the court are petitioner's Expedited Motion for Hearing (Doc. # 5),
respondent's Motion for Extension of Time (Doc. # 8), petitioner's Emergency Motion for Stay
of Removal Proceedings (Doc. # 10), and petitioner's request for leave to file Amended
Emergency Motion for Stay of Removal Proceedings (Doc. # 12.)

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Court noted that petitioner has appealed his removal proceedings through the Seventh Circuit Court of Appeals, which issued its decision denying petitioner's asylum claim and claim for withholding of removal on August 27, 2008.

Court also noted that petitioner previously filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 with this court, which was dismissed by Judge Adelman, 457 F. Supp. 2d 898 (E.D. Wis. 2006).

Court listened to arguments from counsel regarding the pending Emergency Motion for Stay of Removal. Court denied petitioner's request for leave to file Amended Emergency Motion for Stay of Removal as untimely (Doc. # 12). Petitioner's counsel asserted that this court had jurisdiction to issue stay of removal under 8 U.S.C. § 1252(f)(2) and that the standard to be applied is that for injunctive relief in general. Respondents argue that applicable standard is that set forth by the statute: clear and convincing evidence that entry or execution of removal order is prohibited as a matter of law.

Court notes that 8 U.S.C. § 1252 specifically divests this court of jurisdiction to entertain petitioner's habeas petition.

This includes 8 U.S.C. §§ 1252(a)(5), 1252(a)(2)(D), 1252(g).

Petitioner's counsel asserts that U.S. Supreme Court decision in *Boumediene v. Bush*, 128 S.Ct. 2229 (2008), renders the provisions of 8 U.S.C. § 1252 impacting habeas review unconstitutional. Petitioner's position is that the revocation of his visa was contrary to law. Court listens to arguments from both parties as to relevance of *Boumediene*.

In consideration of the parties arguments and the statutes at issue, the court concludes that it lacks jurisdiction to entertain the petition, and as such, the petition is dismissed.