

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

WILLMAN JEUDIS, :
 :
 v. : Civil No. 3:03cv76(AHN)
 :
 UNITED STATES IMMIGRATION
& NATURALIZATION SERVICE;

ORDER

Upon review and consideration of the petition for a writ of habeas corpus filed by petitioner Willman Jeudis ("Jeudis") and the government's opposition, the court hereby dismisses the petition for lack of jurisdiction pursuant to 8 U.S.C. § 1252(d)(1) for failure to exhaust administrative remedies.

Jeudis is a native and citizen of Haiti who was paroled into the United States on or about September 2, 1981. Subsequently, Jeudis's status was adjusted to that of a lawful permanent resident. On February 2, 2000, petitioner was convicted in the Superior Court in Norwich, Connecticut, for the offense of first-degree sexual assault in violation of Conn. Gen. Stat. § 53a-70(a)(2) for which he was sentenced to a term of sixteen years of incarceration. Based on that conviction, on or about April 25, 2000, the Immigration and Naturalization Service ("INS") commenced removal proceedings against Jeudis by serving him with a Notice to Appear (Form I-862) in removal proceedings which charged that Jeudis was deportable from the United States under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. §

1227(a)(2)(A)(iii) (Supp. IV 1998), as an alien convicted of an aggravated felony as that term is defined in INA § 101(a)(43)(F).¹

After a hearing, the immigration judge ("IJ") found that petitioner was deportable as charged, denied his request for relief under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, April 18, 1988, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, G.A. Res. 39/46, 39th Sess., U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) ("Torture Convention"), and ordered that he be removed to his native Haiti. Jeudis timely filed an appeal of that decision with the Board of Immigration Appeals ("BIA"). On January 10, 2003, while his appeal was still pending before the BIA, Jeudis filed the instant habeas petition.

In his petition, Jeudis challenges the IJ's order finding him deportable and denying him relief under the Torture Convention. The government opposes the petition claiming, inter alia, that this court lacks jurisdiction because Jeudis has failed to exhaust his administrative remedies. This court agrees with the government's position.

Both the Supreme Court and the Second Circuit have made clear

¹ The term "aggravated felony" includes any attempt to commit a "crime of violence" as that term is defined in 18 U.S.C. § 16, for which the term of imprisonment is at least one year. See 8 U.S.C. § 1101(a)(43)(F) (Supp. IV 1998).

that, when statutorily required, exhaustion of administrative remedies is jurisdictional and must be strictly enforced without exception. See McCarthy v. Madigan, 503 U.S. 140, 144 (1992) ("Where Congress specifically mandates, exhaustion is required."); Coit Independence Joint Venture v. Federal Savings and Loan Ins. Corp., 489 U.S. 561, 579 (1989) ("[E]xhaustion of administrative remedies is required where Congress imposes an exhaustion requirement by statute."); Bastek v. Federal Crop Ins. Co., 145 F.3d 90, 93-95 (2d Cir. 1998) (in face of clear statutory exhaustion requirement, various exceptions to prudential exhaustion doctrine do not apply; "Statutory exhaustion requirements are mandatory, and courts are not free to dispense with them."), cert. denied, 119 S. Ct. 539, (1998); see also Taylor v. United States Treasury Dep't, 127 F.3d 470, 475 (5th Cir. 1997) ("Whenever the Congress statutorily mandates that a claimant exhaust administrative remedies, the exhaustion requirement is jurisdictional because it is tantamount to a legislative investiture of exclusive original jurisdiction in the agency.") (citing cases).

The statutory framework of the INA includes an express, statutory exhaustion requirement which provides that a court may review a final order of removal only if "the alien has exhausted all administrative remedies available to the alien as of right." 8 U.S.C. § 1252(d)(1) (Supp. IV 1998) accord 8 U.S.C. § 1105a(c)

(1994)(similar provision, applicable to judicial review of final orders of deportation issued against aliens placed in proceedings before April 1, 1997).

In light of this long-standing express statutory directive, the Second Circuit has held that a court loses jurisdiction when an alien fails to exhaust his administrative remedies. See Mejia-Ruiz v. INS, 51 F.3d 358, 364 (2d Cir. 1995) (stating that court loses jurisdiction to review final order of deportation when alien fails to exhaust administrative remedies).

Here, Jeudis's appeal is still pending before the BIA. Thus, he has not received a final administrative order, see 8 U.S.C. § 1101(a)(47)(B)(I) (Supp. IV 1998); 8 C.F.R. §§ 3.1(d)(2), 241.31 (2000), and this court therefore lacks jurisdiction over the habeas petition. Accordingly, Jeudis's petition for a writ of habeas corpus [doc. # 1] is DENIED.

SO ORDERED this day of February, 2003 at
Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge