

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MAXIME HILL :
Petitioner, :
 :
v. : 3:00cv2149(AHN)
 :
JANET RENO, Attorney :
General of the United :
States, :
Respondent. :

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

On November 7, 2000, petitioner, Maxime Hill ("Hill") filed a petition for a writ of habeas corpus seeking to enjoin his deportation from the United States and review of the lawfulness of that deportation. Hill argues that he is entitled to apply for discretionary relief from deportation under former section 212(c) of the Immigration and Nationality Act of 1952, as amended ("INA"), see 8 U.S.C. 1182(c) (1994) ("section 212(c)") (repealed 1996). Upon review and consideration, the petition [doc# 1] is DENIED in its entirety and this action is DISMISSED.

BACKGROUND

Hill, a native of Liberia and citizen of Haiti, was admitted to the United States on or about March 19, 1977, as a lawful permanent resident. After entering the United States, Hill amassed a series of criminal convictions. On May 24, 1988, Hill was convicted in the Supreme Court of the State of New York, Nassau County, of criminal

possession of a controlled substance. He was sentenced to five years' probation. On November 28, 1988, Hill was convicted in the Supreme Court of the State of New York, Nassau County, of criminal possession of a controlled substance. He was sentenced to six months' incarceration. On the same date, Hill also pleaded guilty to a witness tampering charge for which he received 8 months' incarceration. On December 1, 1988, Hill was convicted in the Supreme Court of the State of New York, Nassau County, of attempted robbery in the first degree for which he was sentenced to eighteen to fifty-four months' imprisonment. On or about March 11, 1994, Hill was convicted in the Superior Court of Connecticut, Waterbury, for the sale of illegal drugs. He received thirteen years' incarceration. On the same date, he was also convicted of selling a hallucinogen/narcotic. He received a sentence of ten years' incarceration, to be served concurrently.

Based on the 1988 conviction for criminal possession of a controlled substance in the fifth degree, in February 1993, the Immigration and Naturalization Service ("INS") placed Hill in deportation proceedings. The INS charged that Hill was deportable from the United States under section 241(a)(2)(B)(i) of the Immigration and Nationality Act of 1952, as amended (the "Act" or "INA"), 8 U.S.C. § 1251(a)(2)(B)(i), as an alien who has been convicted of a controlled substance violation.

A deportation hearing was held before an immigration judge ("IJ") in New York, New York, on March 3, 1993. The hearing was continued to April 24, 1993, at which time Hill requested additional time to file a section 212(c) application. Hill filed a section 212(c) application on May 12, 1993 and requested a continuance to prepare for the hearing. By letter dated February 17, 1994, the INS informed the IJ that Hill was incarcerated in Connecticut and awaiting sentencing on his March 1994 convictions and therefore would not be able to appear for his immigration hearing. Accordingly, the INS requested that his case be administratively closed. Because Hill remained incarcerated in Connecticut, in December, 1996, the INS requested a change of venue for the deportation hearing to Suffield, Connecticut.

In September, 1997, the INS filed an "Additional Charges of Deportability" with the Immigration Court based on Hill's March 1994 convictions. The INS charged that Hill was deportable as an alien who has been convicted of an aggravated felony pursuant to section 241(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1251(a)(2)(A)(iii).

At his deportation hearing, which was held in Suffield, Connecticut, the IJ determined that Hill was deportable and was ineligible for section 212(c) relief. Hill appealed the IJ's findings to the Board of Immigration Appeals ("BIA"). By decision dated July 16, 1998, the BIA remanded the case to the IJ because the

IJ had failed to properly issue a decision. In its July 16, 1998 decision, the BIA also determined that Hill was entitled to a merits hearing on his section 212(c) application.

On remand, the IJ issued a revised oral decision finding Hill ineligible for section 212(c) relief. Accordingly, the IJ ordered Hill deported to Haiti. Hill appealed the order of deportation to the BIA. By decision dated August 9, 1999, the BIA determined that Hill was eligible for section 212(c) relief and again remanded the proceedings to the IJ.

By decision dated April 13, 2000, the IJ found that Hill was statutorily ineligible for section 212(c) on a different ground than it had earlier relied on. This time, the IJ determined that because Hill had served more than five years' imprisonment on an aggravated felony, he could not apply for section 212(c) relief.

By decision dated September 20, 2000, the BIA affirmed the IJ's decision. The BIA also noted that it had erred in its August 1999, ruling which held that Hill was eligible for section 212(c) relief. The BIA noted that prior to its August 1999, ruling, Hill had already served a term of imprisonment of five years which made him then ineligible for section 212(c) relief.

Hill then filed the instant petition challenging the BIA's September 20, 2000 decision.

DISCUSSION

Under a 1990 amendment to section 212(c), aliens who have been convicted of an aggravated felony and who have served a term of imprisonment of at least five years by the time of their final order of removal are ineligible for relief from deportation under section 212(c). See 8 U.S.C. § 1182(c) (1994). The Second Circuit has held that "the time aliens spend in prison during the course of a[n] [administrative] hearing" is to be considered for the "purpose[] of rendering them ineligible for § 212(c) relief." Buitrago-Cuesta v. INS, 7 F.3d 291, 296 (2d Cir. 1993); see also In re Davis, Int. Dec. 3439, 2000 WL 1648901 (BIA Nov. 2, 2000) (holding that even after the 1996 amendments to section 212(c), aliens who served more than 5 years in prison are ineligible for section 212(c) relief) aff'd sub. nom Davis v. Ashcroft, No. 01 Civ 6228 (DLC), 2003 WL 289624 (S.D.N.Y. Feb. 10, 2003). Indeed, in Buitrago-Cuesta, the Second Circuit determined that the filing date of the 212(c) application is not relevant because any "[c]hanges in law or fact occurring during the pendency of administrative appeals must be taken into account" in determining eligibility for section 212(c) relief. Id. (citing Anderson v. McElroy, 953 F.2d 803, 806 (2d Cir. 1992)) (considering the time during the pendency of an appeal before the BIA in alien's favor to meet seven-year residency requirement for section 212(c) eligibility). In this case, Hill's administrative proceeding concluded and the order of deportation became final when the BIA

issued its September 2000 decision See 8 C.F.R. 241.1(a) (2000) (stating that a decision becomes final upon dismissal of an appeal by the BIA).

Hill had already acquired more than five years' incarceration by the time his administrative proceedings concluded and therefore he was not eligible for section 212(c) relief.¹ See generally Matter of Alarcon, 20 I. & N. Dec. 557, 562, 1992 WL 249104 (BIA 1992) ("An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and law at the time the application is finally considered.").

CONCLUSION

For the foregoing reasons, Hill's petition for a writ of habeas corpus [doc. #1] is hereby DISMISSED. The clerk is directed to CLOSE this case.

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

Alan H. Nevas
United States District Judge

¹ Indeed, based on the government's calculations, Hill was ineligible for section 212(c) relief on September 26, 1997, when Hill first appeared before the IJ after his amended charges had been lodged.