

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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:
SHELDON ANDRE BARTON, :
:
Petitioner, :
:
-against- : No. 3:01CV881(GLG)
:
JOHN ASHCROFT, ATTORNEY :
GENERAL OF THE UNITED STATES, :
ET AL., :
:
Respondents. :
:
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ORDER ON PETITION FOR WRIT OF HABEAS CORPUS

In May 2001, Petitioner, Sheldon Andre Barton, filed a pro se Petition for Writ of Habeas Corpus [**Doc. #2**]. On October 25, 2001, this Court held that (1) Petitioner had not acquired derivative citizenship when his father became a naturalized United States citizen or at any time thereafter; and (2) the statute which treats a legitimated child as it would a legitimate child for purposes of acquiring derivative citizenship did not violate the equal protection guarantee embedded in the Due Process Clause of the Fifth Amendment. Barton v. Ashcroft, 171 F. Supp. 2d 86, 93 (D. Conn. 2001).

Petitioner also brought an equal protection challenge to section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h). Under that section, the Attorney General may grant a

waiver of deportability if he or she determines that an alien's deportation would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, or child of such an alien. 8 U.S.C. § 1182(h)(1)(B). However, the Attorney General may not grant such discretionary relief where a resident alien has been convicted of an aggravated felony.¹ 8 U.S.C. § 1182(h). Petitioner urged this Court to find section 212(h) unconstitutional. We held in abeyance the Petition for Habeas Corpus Relief pending a decision by the Court of Appeals for the Second Circuit on that precise issue in another case. Barton, 171 F. Supp. 2d at 93.

On May 29, 2002, the Second Circuit held that § 212(h) is indeed constitutional. Jankowski-Burczyk v. INS, __ F.3d __, 2002 WL 1066630, at *7 (2d. Cir. 2002) (there is no violation of the equal protection component of the Due Process Clause because the classification adopted by Congress in § 212(h) passes the rational basis test). Accordingly, we DENY the Petition for Habeas Corpus Relief [**Doc. #2**].

SO ORDERED.

Dated: June 19, 2002
Waterbury, Connecticut

¹ The statute does not eliminate such discretionary relief for non-resident aliens who have been convicted of an aggravated felony.

_____/s/_____
GERARD L. GOETTEL,
United States District Judge