

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IBRAHIM MADKOUR, :
Petitioner, :
 :
-vs- : Civil No. 3:02cv343 (PCD)
 :
JOHN ASHCROFT, Attorney General of :
the United States, :
Respondent. :

RULING ON MOTION FOR CHANGE OF VENUE

Respondent moves for a change of venue. The motion is denied.

I. BACKGROUND

On September 21, 1999, petitioner, a Lebanese citizen and lawful permanent resident, was convicted of possession, manufacture, delivery and advertisement of drug paraphernalia in violation of ARIZ. REV. STAT. § 13-3415(A).¹ On June 26, 2000, petitioner was notified that his conviction for violation of a law relating to a controlled substance rendered him subject to removal pursuant to § 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i).

At the removal hearing in Florence, Arizona, respondent apparently conceded that he could be removed as charged and sought protection under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984). On April 12, 2001, the

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ARIZ. REV. STAT. § 13-3415(A) provides that “[i]t is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony.”

Immigration Judge (“IJ”) denied his application. On January 28, 2002, the Board of Immigration Appeals (“BIA”) affirmed the IJ’s finding that he was removable for the conviction and that he was ineligible for relief from deportation.²

In his habeas petition, petitioner argues that the Arizona offense was an impermissible basis for an order of removal. Specifically, petitioner argues that “[b]ecause [his] offense is not covered [by] 21 U.S.C. § 802 [defining terms as used in the Controlled Substances Act, 84 Stat. 1242, 21 U.S.C. § 801 *et seq.*], he has not been convicted of a removable offense.”

II. DISCUSSION

Respondent argues that the location of petitioner’s conviction and removal proceedings weigh in favor of transferring the present case to Arizona. Petitioner responds that transfer is inappropriate based on his Connecticut residence and the limited need for information found only in Arizona.

A. Standard

Tradition rules of venue apply to habeas proceedings. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-94, 93 S. Ct. 1123, 35 L. Ed. 2d 443 (1973); *Henderson v. INS*, 157 F.3d 106, 128 n.25 (2d. Cir. 1999); *Barnaby v. Reno*, 127 F. Supp. 2d 322, 324 (D. Conn. 2001). As such, an action may be transferred to any district in which it originally may have been brought. *See* 28 U.S.C. § 1404(a). An action may be brought in the district in which plaintiff resides or in the district in which the events giving rise to the action occur. *See* 28 U.S.C. § 1391(e).

² The decisions of the IJ and of the BIA indicate that petitioner conceded that his Arizona conviction rendered him removable. Petitioner alleges that the “BIA summarily held . . . that [he] is removable” and argues that he is not removable. If petitioner did, in fact, concede his that he was removable before the IJ, he will first be required to address the question of how this Court may entertain the merits of an argument conceded before the IJ.

An action may be transferred “[f]or the convenience of parties and witnesses [and] in the interest of justice.” *See* 28 U.S.C. § 1404(a). Relevant considerations in determining the propriety of such a transfer include: (1) the location where all material events took place, (2) the location where records and witnesses relevant to petitioner’s will likely be found and (3) the convenience of the forum for both respondent and petitioner. *See* 28 U.S.C. § 1391(a),(b); *Braden*, 410 U.S. at 493-94; *Henderson*, 157 F.3d at 128 n.25. “[M]otions for transfer . . . are determined upon notions of convenience and fairness on a case-by-case basis.” *Publiker Indus. Inc. v. United States (In re Cuyahoga Equip. Corp.)*, 980 F.2d 110, 117 (2d Cir. 1992). It is the movant’s burden to establish its entitlement to transfer. *See Factors Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215, 218 (2d Cir. 1978).

B. Analysis

In support of its position that venue should properly be transferred to Arizona, respondent argues as follows. Petitioner was convicted under the criminal laws of that state, there served his prison sentence for the conviction and was there subject to removal proceedings. Witnesses and records relevant to the Arizona conviction and removal proceedings are located in that state, although respondent concedes that “there does not appear to be any factual dispute that would require the taking of evidence.” Petitioner is presently free to travel to Arizona if the case is transferred there. Finally, the federal court in Arizona would be more familiar with Arizona criminal law than would a Connecticut court.

The above arguments are all persuasive in the abstract and are accorded some weight in determining whether transfer is proper. However, the ultimate decision must assess the particular merits of the case and decide if the proposed venue, in the interest of fairness and convenience, better serves

the parties. *See Publicker Indus. Inc.*, 980 F.2d at 117. Under the present circumstances, such is not the case.

As petitioner's response and respondent's argument bear out, the issue presented in the present petition does not involve a fact-intensive inquiry where resort to witnesses and evidence would be anticipated or required. The question, which respondent does not dispute, is one of statutory construction, more likely of federal statutes and the relevant Arizona criminal statute at face value, thus obviating the need for substantial experience with Arizona law. Neither side anticipates an evidentiary hearing or the need to call witnesses. Although it very well may be true that petitioner is "equally capable of briefing this issue of law before an Arizona federal court as he would be before a Connecticut court," it is not apparent that the mere fact that certain documents are located in another state should cause petitioner, who allegedly is a resident of this state, to litigate in a state thousands of miles distant from here. *See id.* Nor does respondent argue that it is required to produce a significant amount of documentary evidence in support of its position.

As such, there has been no showing, other than the location of criminal and immigration records, that the interest of justice and convenience of the parties would be better served by transferring the case to Arizona. *See Henderson*, 157 F.3d at 128 n.25. As respondent has failed to establish that Arizona is the more appropriate venue, *see Factors Etc., Inc.*, 579 F.2d at 218, the motion to transfer is denied.

III. CONCLUSION

Respondent's motion for change of venue (Doc. 7) is **denied**. Respondent shall file its response to the order to show cause addressing the merits of the present petition by July 26, 2002.

SO ORDERED.

Dated at New Haven, Connecticut, July ____, 2002.

Peter C. Dorsey
United States District Judge