

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

LETICIA ABUNDIS,	:	
Petitioner	:	
	:	
v.	:	Civil Action No.
	:	3:03 CV 276(CFD)
KUMA DEBOO, IMMIGRATION AND	:	
NATURALIZATION SERVICE,	:	
Respondents	:	

RULING ON MOTION FOR RECONSIDERATION

Pending is petitioner Abundis’s motion for reconsideration [Doc. #13] of the Court’s February 4, 2004 ruling denying Abundis’s petition for a writ of habeas corpus. For the following reasons, Abundis’s motion for reconsideration is granted, but the relief requested is denied.¹

I. Standard for Reconsideration

The standard for granting a motion for reconsideration is strict. See Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). Such a motion generally will be denied unless the "moving party can point to controlling decisions or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." Id. Thus, "the function of a motion for reconsideration is to present the court with an opportunity to correct 'manifest errors of law or fact or to consider newly discovered evidence.'" LoSacco v. City of Middletown, 822

¹Petitioner was removed from the United States to Mexico on or about June 29, 2004. However, petitioner’s removal does not render her motion for reconsideration moot. See Marrero Pichardo v. Ashcroft, 374 F.3d 46, 51 (2d Cir. 2004); Swaby v. Ashcroft, 357 F.3d 156, 159-60 (2d Cir. 2004).

F. Supp. 870, 876-77 (D. Conn. 1993) (quoting Rothwell Cotton Co. v. Rosenthal & Co., 827 F.2d 246, 251 (7th Cir. 1987)), aff'd, 33 F.3d 50 (2d Cir. 1994). "[A] motion for reconsideration may not be used to plug gaps in an original argument or to argue in the alternative once a decision has been made." Horsehead Res. Dev. Co., Inc. v. B.U.S. Evtl. Serv., Inc., 928 F. Supp. 287, 289 (S.D.N.Y. 1996) (internal citations and quotations omitted).

II. Discussion

Abundis had filed a habeas petition under 28 U.S.C. § 2241 challenging an order of removal. In its ruling denying the petition, the Court held that the BIA properly concluded that Abundis is statutorily ineligible for former section 212(c) relief. [Doc. #12]. In addition, the Court concluded that Abundis failed to state an equal protection claim.

Abundis now argues that she may be eligible for cancellation of removal under a special rule for battered spouses. However, Abundis did not raise this argument before the Immigration Judge, the Board of Immigration Appeals, or in her habeas petition filed with this Court. Accordingly, Abundis waived her right to pursue this claim. See 8 U.S.C. § 1252(d)(1); Theodoropoulos v. INS, 358 F.3d 162, 169-71 (2d Cir. 2004). Even if she had exhausted this claim, Abundis is not eligible for cancellation of removal under the special rule for battered spouses as she has been convicted of an aggravated felony. See 8 U.S.C. § 1229b(b)(2)(A)(iv) (stating that alien must demonstrate that she has not been convicted of an aggravated felony in order to qualify for cancellation of removal under battered spouse rule).

In addition, Abundis requests that she be released from detention, on bond, while she pursues administrative remedies. This request is now moot by Abundis's removal to Mexico on or about June

29, 2004. Even if Abundis were still in detention, since Abundis was paroled into the United States for criminal prosecution, she would have no right to be released into the United States pending her pursuit of additional administrative relief or her removal. See Napoles v. INS, 278 F. Supp. 2d 272, 276-77 (D. Conn. 2003) (holding that continued detention of petitioner, who was paroled into the United States, was constitutional so long as petitioner is afforded periodic parole reviews).

III. Conclusion

For the foregoing reasons, Abundis's Motion for Reconsideration [Doc. #13] is GRANTED, but the Court affirms its February 4, 2004 ruling denying the habeas petition. In addition, the Court denies Abundis's request to be released on bond as moot.

SO ORDERED this ____ day of August 2004, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE