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10-16-2003

Williams v. Dist Dir INS

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NOT PRECEDENTIAL

*AMENDED

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

02-2443

WORGOR WILLIAMS,

Appellant

v.

ANDREA J. QUARANTILLO, DISTRICT DIRECTOR FOR INS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(D.C. Civ. No. 02-cv-00119)

District Judge: The Honorable Katharine S. Hayden

Argued: June 16, 2003

Before: ALITO, ROTH, and HALL,* Circuit Judges

(Filed: September 26, 2003)

OPINION

*Sitting by designation: Cynthia H. Hall, Circuit Judge, U.S.C.A., Ninth Circuit.

*Maria Torres, Esq. (Argued)

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Counsel for Appellee

PER CURIAM:

This is an appeal from a District Court order denying a petition for a writ of habeas corpus under 28 U.S.C. § 2241. The petitioner, Worgor Williams, a native and citizen of Ghana, arrived in the United States as stowaway and asserts rights under Article III of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, G.A.Res. 39/46, 39th Sess., U.N.G.A.O.R. Supp. No. 51 at 197, U.N. Doc. A./39/51 (1984). Because we write for the benefit of the parties, the background of the case is not set out.

1. Although the government contends that the District Court lacks jurisdiction to

entertain the habeas petition, our Court's recent decision in Ogbudimkpa v. Ashcroft, 2003 WL 21995303, (3d Cir., Aug. 22, 2003), forecloses that argument.

2. The petitioner contends that he had a constitutional right to due process in the administrative proceedings and that this right was violated. The respondent argues, however, that “[a]s an unadmitted alien in immigration proceedings, [Williams had] no protection from the Constitution” Respondent’s Br. at 26. Assuming for the sake of argument that the petitioner had due process rights in the administrative proceedings, we hold, for essentially the reasons set out in the opinion of the District Court that “all due process requirements were met.” Dist. Op. at 10. In Chong v. District Director, INS, 264 F.3d 378, 386 (3d Cir. 2001), which concerned removal proceedings against a permanent resident alien, we stated that due process required that the alien “(1) be entitled to fact finding based on a record produced before the board and disclosed to her; (2) be allowed to make arguments on her own behalf; and (3) have the right to an individualized determination of her interests.” See also Abdulai v. Ashcroft, 239 F.3d 542, 549 (3d Cir. 2001). In this case, the petitioner was given all of those rights. We have considered all of the petitioner’s arguments, but assuming arguendo that the petitioner possessed due process rights, all of those rights were observed.

3. We have considered all of the petitioner’s remaining arguments, and find no ground for reversing the decision of the District Court. We note that both the Immigration Judge and the Board of Immigration appeals found that the petitioner had

not satisfied his burden of showing that he is likely to be tortured if returned to Ghana and that the District Court found that this conclusion was supported by substantial evidence.

See J.A. 20-21, 100, 103-111.

For the reasons set out above, the order of the District Court denying the petition for a writ of habeas corpus is affirmed.