

June 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60725
Summary Calendar

JEAN A. DORIVAL,

Petitioner-Appellant,

versus

JOHN ASHCROFT, U.S. ATTORNEY GENERAL,

Respondent-Appellee.

28 U.S.C. § 2241 petition transferred
from the United States District Court
for the Eastern District of New York
USDC No. 1:02-cv-06162-DGT
A91 420 735

Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Haitian citizen Jean Dorival filed a 28 U.S.C. § 2241 petition for writ of habeas corpus in district court for the Eastern District of New York challenging the Immigration Judge's order of removal from the United States. In his petition he asserted a claim that he was a national of the United States. The district court transferred Dorival's habeas corpus petition to this court. Dorival requests a stay of removal; that request

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

is DENIED. The Respondent, Attorney General Ashcroft, moves for dismissal of the case for lack of jurisdiction and, in the alternative, for summary affirmance. Ashcroft's motion for summary affirmance is DENIED. Dorival moves for leave to file an out-of-time response to Ashcroft's motion for summary affirmance; Dorival's motion is DENIED.

28 U.S.C. § 1631 permits a transfer if this court would have been able to exercise jurisdiction on the date that the case was filed in the district court, the district court lacked jurisdiction over the case, and the transfer is in the interest of justice. Dorival filed his 28 U.S.C. § 2241 petition in the district court before he exhausted his administrative remedies before the Board of Immigration Appeals. Therefore, this court could not have exercised jurisdiction over the petition on the date that Dorival filed the petition in district court. See *Goonsuwan v. Ashcroft*, 252 F.3d 383, 387 (5th Cir. 2001); 8 U.S.C. § 1252(d)(1) (a court may review a final order of removal only if the alien has exhausted all administrative remedies as of right).

DISMISSED for lack of jurisdiction.