

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EDGAR AMIR GRACIANI,

Petitioner,

v.

CAROL HOLINKA,

Respondent.

ORDER

11-cv-296-bbc

Under the Second Chance Act of 2007, 18 U.S.C. § 3624(c), the Federal Bureau of Prisons is authorized to place prisoners in a residential re-entry center, or halfway house, for up to 12 months before the end of the prisoner's term of imprisonment. In this petition for a writ of habeas corpus brought under 28 U.S.C. § 2241, petitioner Edgar Amir Graciani contends that the bureau is refusing to transfer him to a halfway house because of complaints he made about prison conditions, in violation of § 3624(c), which requires the bureau to consider five factors in making decisions regarding placement in a halfway house.

Respondent argues that the petition should be dismissed, both because petitioner failed to properly exhaust his administrative remedies and because his claim fails on the merits. With respect to exhaustion, respondent says that petitioner did not complete the

exhaustion process before filing his petition and that he did not include his retaliation theory in each of his appeals. With respect to the merits, respondent says that the bureau considered each of the statutory factors and that officials at the prison recommended petitioner for a full 12 months in a halfway house, but that the manager of the facility in question did not have space for petitioner.

Petitioner admits that he has not yet received a response to his final administrative appeal, but he argues that the court should deem his claim exhausted because the Central Office has failed to decide the appeal within the allotted time. 28 C.F.R. § 542.18 ("If the inmate does not receive a response within the time allotted for reply, including extension, the inmate may consider the absence of a response to be a denial at that level."). In addition, he says that he included his retaliation theory in his grievance and all of his appeals.

Unlike claims brought under § 1983, petitions under § 2241 are not subject to a statutory exhaustion requirement. Although courts generally require exhaustion under common law, Richmond v. Scibana, 387 F.3d 602, 604 (7th Cir. 2004), a court may excuse a failure to exhaust under certain circumstances. Gonzalez v. O'Connell, 355 F.3d 1010, 1016 (7th Cir. 2004) (because § 2241 does not contain exhaustion requirement, unlike §§ 2254 or 2255, "sound judicial discretion governs" decision to require or excuse exhaustion in action brought under statute) (quoting McCarthy v. Madigan, 503 U.S. 140, 144 (1992)).

In this case, it makes no difference whether petitioner completed the grievance process properly because his claim fails on the merits.

Respondent submitted affidavits from those responsible for making the decision regarding petitioner's placement in a halfway house. Janis Braker, the case manager of petitioner's prison, explains in her declaration how she considered each of the factors outlined in 18 U.S.C. § 3621, including (1) the resources of the facility contemplated; (2) the nature and circumstances of the offense; and (3) the history and characteristics of the prisoner. Dkt. #15. Although she concluded that petitioner would benefit from a full 12-month placement in a halfway house, Carlos Rodriguez, the case manager at the halfway house in Puerto Rico where petitioner would be transferred, says in his declaration that the facility did not have bed space for petitioner until six months later. Dkt. #16. In addition, he says that there are no other halfway houses on the island. Id.

Although petitioner says he believes that these explanations are pretexts, he has not submitted any admissible evidence to support his allegation or identified another halfway house as an alternative. In the absence of such evidence, I cannot grant the petition. It is not the court's role to review the § 3621(b) factors independently and make a de novo determination as to petitioner's placement in a halfway house. The case manager's decision is entitled to deference so long as it is not arbitrary, lacking any rational basis or otherwise contrary to the requirements of the statute. Singleton v. Smith, 2010 WL 744392, *2 (C.D.

Ill. Feb. 26, 2010) (“If the [BOP] considers the relevant factors in making its determination, a challenge . . . could not succeed unless the plaintiff could show that the decision was arbitrary, capricious, or otherwise an abuse of discretion, a difficult standard for the plaintiff to meet.”) (citing Tristano v. Federal Bureau of Prisons, 2008 WL 3852699, at *1 (W.D. Wis. May 15, 2008)); see also Pence v. Holinka, 2009 WL 3241874, *3 (W.D. Wis. Sept. 29, 2009) (denying petition for writ of habeas corpus because bureau's decision was not arbitrary and was entitled to deference). Because petitioner has not adduced any evidence that the halfway house has available bed space, I cannot say that the bureau’s decision is arbitrary or capricious.

ORDER

IT IS ORDERED that petitioner Edgar Amir Graciani’s petition for a writ of habeas corpus under 28 U.S.C. § 2241 is DENIED for his failure to show he is in custody in violation of federal law.

Entered this 14th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge