

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MOHAMMAD-MUAWYEH : Case No. 1:13-cv-911
MOHAMMAD-YAHYA DWEIDARY :
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 :
 Plaintiff, : Judge Timothy S. Black
 : Magistrate Judge Karen L. Litkovitz
vs. :
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 :
 CITY OF CINCINNATI, *et al.*, :
 :
 :
 Defendants. :

**DECISION AND ENTRY ADOPTING THE REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE
(Doc. 21)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court, and, on October 7, 2014 submitted a Report and Recommendation. (Doc. 21). Plaintiff did not file objections.¹

As required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does


¹ The Court notes that although proper notice was served upon Plaintiff, the copy of the Report and Recommendation which the Clerk mailed to Plaintiff was returned to the Court due to Plaintiff's failure to apprise the Court of his change of address. (Doc. 22). By failing to keep the Court apprised of his current address, Plaintiff demonstrates a lack of prosecution of his action. *See, e.g., Theede v. United States Dep't of Labor*, 172 F.3d 1262, 1265 (10th Cir.1999) (failure to object to a Magistrate Judge's Report and Recommendation, due to delay resulting from party's failure to bring to the court's attention a change in address, constitutes failure to object in a timely manner. Because the Recommendation was mailed to the last known address, it was properly served, and the party waived his right to appellate review). *See also Barber v. Runyon*, 23 F.3d 406 (6th Cir. 1994).

determine that such Report and Recommendation should be and is hereby adopted in its entirety. Accordingly:

1. Defendant's motion to dismiss the complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) (Doc. 15) is **GRANTED** as to any claims brought under 8 U.S.C. § 1447(b);
2. Defendant's motion to dismiss the complaint for failure to state a claim for relief pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. 15) is **GRANTED** on failure to exhaust grounds as to any claims brought under 8 U.S.C. § 1421(c);
3. The Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of this Order would not be taken in good faith, and therefore **DENIES** Plaintiff leave to appeal *in forma pauperis*. Plaintiff remains free, however, to apply to proceed *in forma pauperis* in the Court of Appeals; and
4. This civil action is **TERMINATED**.

IT IS SO ORDERED.

Date: _____


Timothy S. Black
United States District Judge