IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TEXARKANA DIVISION

EHONG SIU	§	
VS.	§	CIVIL ACTION NO. 5:09-CV-50
KEITH ROY	§	

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Ehong Siu, a prisoner confined at the Federal Correctional Institution in Texarkana, Texas, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court ordered that this matter be referred to a magistrate judge for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the petition without prejudice for failure to exhaust administrative remedies.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the objections are without merit. Petitioner did not exhaust administrative remedies prior to filing this petition. Instead, he pursued administrative remedies after this petition was filed. Exhaustion was not futile because his claims were reviewed on the merits. After exhausting administrative remedies, petitioner filed a second petition, which was dismissed. *See Siu v. Roy*, Civil Action No. 5:09-CV-167 (E.D. Tex).

ORDER

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED this 1st day of February, 2012.

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DAVID FOLSOM
UNITED STATES DISTRICT JUDGE