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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

SARITH S. CHAN,

Petitioner,

v.

DEPARTMENT OF HOMELAND
SECURITY, NATHALIE ASHER, Field Office
Director, NORTHWEST DETENTION
CENTER,

Respondents.

Case No. C12-847-RAJ

ORDER

The court has reviewed the Report & Recommendation (“R&R”) (Dkt. # 4) of the Honorable James P. Donohue, United States Magistrate Judge. The R&R recommends that the court deny Petitioner’s motion for an emergency stay of removal because the court lacks subject matter jurisdiction. The R&R declares that Petitioner is subject to a final order of removal dated May 19, 1998, and that 8 U.S.C. § 1252 strips this court of jurisdiction to review actions taken to enforce that order.

This court is currently unable to verify whether Petitioner is subject to a final order of removal and the legal basis for that order of removal. Moreover, while the R&R may be correct in its assumption that Petitioner has opened an impermissible collateral attack on his removal

1 order, the court currently has no way of verifying the nature of the collateral attack. The court is
2 therefore unable to determine whether the jurisdiction-stripping provisions of 8 U.S.C. § 1252
3 apply. Accordingly, the court is unable to verify whether it has subject matter jurisdiction. The
4 court notes that it has, at a minimum, subject matter jurisdiction to decide whether the
5 jurisdiction-stripping procedures of 8 U.S.C. § 1252 apply.

6 Nonetheless, Petitioner cannot obtain injunctive relief without establishing at least a
7 possibility of success on the merits of his claim. Petitioner claims that he has asked the “Board
8 of Immigration” to reopen his claim on the basis that he is a citizen of the United States.
9 Petitioner provides no evidence or other basis for the court to believe he has any possibility of
10 succeeding on that claim or any other claim for relief. Accordingly, while the court declines to
11 adopt the R&R, the court will not grant an emergency stay of removal on the facts now before
12 the court.

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14 The court declines to adopt the R&R, but nonetheless DENIES Petitioner’s motion for an
15 emergency stay of removal. The court refers this action back to Judge Donohue for further
16 proceedings.
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18 DATED this 17th day of May, 2012.

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21 The Honorable Richard A. Jones
22 United States District Court Judge
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