

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 07-5349

September Term 2007

07cv01439

Filed On: June 2, 2008

Jimmy Lawrence Nance,

Appellant

v.

Michael B. Mukasey, Attorney General of the
United States, et al.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Sentelle, Chief Judge, and Garland and Brown, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order, filed September 14, 2007, dismissing appellant's complaint without prejudice for lack of subject matter jurisdiction, and the order, filed October 23, 2007, denying reconsideration, be affirmed. Claimants under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671, et seq., must meet the jurisdictional prerequisite of exhausting administrative remedies with the appropriate agency before filing suit in district court. Moreover, sovereign immunity bars suits against the United States absent an explicit or unequivocal waiver. See 28 U.S.C. §§ 2675(a), 2679(d)(5). Because appellant failed to demonstrate he exhausted his administrative remedies, his claim against the Attorney General was properly dismissed without prejudice. See Simpkins v. District of Columbia Government, 108 F.3d 366, 371 (D.C. Cir. 1997) (dismissal for failure to exhaust is without prejudice).

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam