

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Submitted - December 3, 2009

JOSEPH COVELLO, J.P.  
DANIEL D. ANGIOLILLO  
PLUMMER E. LOTT  
SHERI S. ROMAN, JJ.

2009-02670

DECISION & ORDER

In the Matter of Bernard Samuel, appellant, v George  
B. Alexander, etc., respondent.

(Index No. 6262/08)

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Bernard Samuel, Beacon, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Richard Dearing and David  
Lawrence III of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the New York State Division of Parole dated April 16, 2008, denying, after a hearing, the petitioner's application to be released to parole, the petitioner appeals from a judgment of the Supreme Court, Dutchess County (Forman, J.), dated January 21, 2009, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, without costs or disbursements.

A parole determination may be set aside only where the determination of the New York State Division of Parole (hereinafter the Parole Board) to deny an early release evinced "irrationality bordering on impropriety" (*Matter of Russo v New York State Bd. of Parole*, 50 NY2d 69, 77). While the Parole Board is required to consider a number of statutory factors in making its determination (*see* Executive Law § 259-i[2][c]), it is not required to give equal weight to each of the factors it considers, nor is it required to address each factor in its decision (*see Matter of Porter v Alexander*, 63 AD3d 945, 946; *Matter of Hanson v New York State Bd. of Parole*, 57 AD3d 994, 994-995; *Matter of Hardwick v Dennison*, 43 AD3d 406).

January 19, 2010

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Here, the petitioner failed to meet his burden (*see Matter of Galbreith v New York State Bd. of Parole*, 58 AD3d 731) of showing that the Parole Board acted irrationally, bordering on impropriety, in denying his application to be released to parole (*see Matter of Silmon v Travis*, 95 NY2d 470, 476; *Matter of Russo v New York State Bd. of Parole*, 50 NY2d at 77). The Parole Board considered the statutory factors relevant to the petitioner's application to be released to parole, including the fact that he was subject to a final order of deportation issued by a federal immigration judge. There is no requirement that the Parole Board grant an individual conditional parole for deportation only (*see Executive Law § 259-i[2][d]*), merely because he has completed his minimum term and is subject to a final order of deportation. Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding.

COVELLO, J.P., ANGIOLILLO, LOTT and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court