2020 WL 3051089
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United States District Court, C.D. California.

Shamim DARCHINI, et al
v.
POMPEO, et al

Case No. SACV 19-1417 JVS (DFMx)
|
Filed 03/18/2020

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Proceedings: [IN CHAMBERS] Order Regarding Motion to Dismiss

The Honorable James V. Selna, U.S. District Court Judge

***1** Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Michael R. Pompeo, Joel D. Nantais, Erin R. Hoffman, Dean M. Kaplan, Daniel E. Mickelson, the U.S. Department of State, Kevin K. McAleenan, and the U.S. Department of Homeland Security ("the Government") moved to dismiss Plaintiffs' First Amended Complaint ("FAC"). Mot., Dkt. No. 82. Plaintiffs[1] opposed. Opp'n, Dkt. No. 84. The Government replied. Reply, Dkt. No. 86.

For the following reasons, the Court **GRANTS** the motion.[2]

I. BACKGROUND

Plaintiffs in this action are U.S. citizens and lawful permanent residents ("Petitioner Plaintiffs") and their Iranian national relatives or fiancées who are visa applicants ("Beneficiary Plaintiffs"). FAC, Dkt. No. 77 ¶ 2. Plaintiffs allege that the Government, through unreasonable delays, has denied them timely adjudication of their case-by-case waivers under Presidential Proclamation 9645, "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats," which President Trump signed on September 24, 2017. 82 Fed. Reg. 45161 (2017) ("PP 9645"). Id. ¶ 1. Plaintiffs also challenge the patterns and policies causing the withholding of waiver adjudications. Id.

PP 9645 prohibits the entry of immigrants and non-immigrants from Iran. Id. ¶ 4. But it provides for case-by-case waivers from the ban for individuals who can "demonstrate" that denial of entry "would cause undue hardship, ... would not pose a threat to national security, ... and would be in the national interest." Procl. § 3(c), 82 Fed. Reg. at 45168. Under PP 9645, "a consular officer, or the Commissioner, United States Customs and Border Protection (CBP), or the Commissioner's designee, as appropriate, may, in their discretion, grant waivers on a case-by-case basis ...." Id.

Plaintiffs claim that they fulfilled all requirements to obtain family-based or fiancée-based visas, before their applications were refused pursuant to PP 9645. Id. ¶ 3.

The Proclamation "requires the Secretary of State and the Secretary of Homeland Security to adopt guidance establishing when waivers may be appropriate for foreign nationals who would otherwise be banned." Id. ¶ 7. Plaintiffs allege that the Government has a "PP 9645 Brain Trust" team, inconsistent with the text of the proclamation, that has "secretly promulgated guidance on the waiver adjudication scheme." Id. ¶ 8. Specifically, Plaintiffs allege that Defendants "have issued guidance that extends authority and discretion over case-by-case waiver adjudications to visa chiefs, and consular section chiefs," and require "that for a consular officer to approve a waiver and issue a visa, consultation with consular management and the Visa Office is required." Id. The Government, through this "Brain Trust," has "unlawfully extended the authority and discretion - that PP 9645 granted only with individual consular officers - to consular managers, visa chiefs, consular section chiefs, and/or consular management and the Visa Office." Id. ¶ 9.

***2** Requirements contrary to PP 9645, such as these that extend authority and discretion over case-by-case waiver adjudications, demonstrate Defendants' pattern and policy of unreasonable delay in dealing with waiver adjudication, as well as actions that are arbitrary and capricious. Id. ¶ 10. As a result, the Beneficiary Plaintiffs have waited for travel ban waivers an average of 676 days since their applications were refused pursuant to PP 9645. Id. ¶ 12. Plaintiffs allege that they have been awaiting decisions on such waivers for between 14 and 25 months. Id. ¶ 22, 39, 45, 53, 61

Because the number of plaintiffs is sizable, the Court highlights just one representative account of their experiences with this waiver process. Petitioner Plaintiff Masoud Abdi is a Legal Permanent Resident and married to Beneficiary Plaintiff Shima Montakhabi, who lives in Iran. Id. ¶¶ 40, 42. He filed a Form I-130, Petition for Alien Relative for Montakhabi in late 2016. Id. ¶ 41. Consideration of Montakhabi's waiver from the travel ban has been pending since March 29, 2018. Id. ¶ 45.

Defendants have implemented a policy that, if a visa applicant does not fit under one of the waiver examples, but the interviewing consular officer and consular manager believe that the applicant meets the undue hardship and national interest requirements for the waiver for other reasons, the consular officer must email countries-of-concern-inquiries@state.gov, staffed only by the PP 9645 Brain Trust and Quality Support, Inc. contractors, and include the facts they believe meet the undue hardship and national interest requirements. Id. ¶ 73. Only if the Visa Office concurs that a waiver may be justified, can the visa applicant receive a waiver of the travel ban. Id.

Plaintiffs allege that contractors working for Quality Support, Inc. informed Visa Office employees that they had sent "refusals" under PP 9645 "back to post." Id. ¶ 77. These contractors, according to Plaintiffs, have been designated "to make adjudications of the national security and public safety prong of the waiver adjudication," thereby usurping the authority and discretion of consular officers. Id. ¶ 79.

As a result of this scheme, Plaintiffs suffer a range of ongoing harms, including having their criminal status checks, medical examinations, and security advisor opinions repeatedly expire. Id. ¶¶ 6, 98. Some of the Plaintiffs in this action are stranded in third countries different from their national origin. Id. ¶ 100. Plaintiffs also face economic hardship because of U.S. sanctions placed on Iran. Id. ¶¶ 102-03.

On the basis of these factual allegations, Plaintiffs assert five legal claims: violations of the Administrative Procedure Act, 5 U.S.C. §§ 555 and 706; violation of the Due Process Clause of the Fifth Amendment to the United States Constitution; violation of Equal Protection, and for a writ of mandamus. Id. ¶¶ 109-154.

Plaintiffs request that the Court declare that Defendants' waiver adjudication procedure is unconstitutional and that Plaintiffs' waiver decisions have been unreasonably delayed, and to "order Defendants to adjudicate the Beneficiary Plaintiffs' individual eligibility for waivers of PP 9645." See Prayer For Relief.

Plaintiffs moved for a preliminary injunction asking the Court to order the Government to complete its adjudication of the waivers within 15 days of the Court's decision. Dkt. No. 8. The Court declined to issue a preliminary injunction on September 24, 2019. Dkt. No. 42. The Court granted Defendants' motion to dismiss Plaintiffs' Complaint on December 3, 2019. Order, Dkt. No. 73.

II. LEGAL STANDARD

***3** Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. Nor must the Court " 'accept as true a legal conclusion couched as a factual allegation.' " Id. at 678-80 (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must "determine whether they plausibly give rise to an entitlement to relief." Id. at

679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

III. DISCUSSION

A. Standing

Defendants argue that Plaintiffs lack standing "because they both fail to establish a non-conjectural, likely-to-occur injury and because any such injury is not fairly traceable to the national security and public-safety vetting procedure they challenge as unlawful." Mot. at 10. Because thousands of waiver grants have already occurred, and nine of the original Plaintiffs in this case had their waivers adjudicated and were ultimately found eligible for waivers, Defendants contend that Plaintiffs fail to establish their claimed injury is likely to occur. Id. at 11; see Fourth Declaration of Chloe Dybdahl ("Dybdahl Decl."), Dkt. No. 82-1, Ex. A ¶ 5.

Pursuant to Article III of the Constitution, the Court's jurisdiction over the case "depends on the existence of a 'case or controversy.' " GTE Cal., Inc. v. FCC, 39 F.3d 940, 945 (9th Cir. 1994). A "case or controversy" exists only if a plaintiff has standing to bring the claim. Nelson v. NASA, 530 F.3d 865, 873 (9th Cir. 2008), rev'd on other grounds, 131 S. Ct. 746 (2011). To have standing, "a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that their injury will be redressed by a favorable decision." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc., 528 U.S. 167, 180–81 (2000); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992); Nelson, 530 F.3d at 873.

The Court finds that Plaintiffs have standing to assert their claims. Subsequent developments after Plaintiffs initiated their action – i.e., some of the former plaintiffs having their waiver requests adjudicated – are not relevant to this analysis. See D'Lil v. Best W. Encina Lodge & Suites, 538 F.3d 1031, 1036 (9th Cir. 2008). And where, as here, "the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits, the jurisdictional determination should await a determination of the relevant facts on either a motion going to the merits or at trial." Augustine v. U.S., 704 F.2d 1074, 1077 (9th Cir. 1983).

B. Justiciability

***4** The Government argues that PP 9645 "merely governs Executive Branch processing and does not create privately enforceable rights," and that "the APA does not provide a cause of action to these claims, which are textually committed to agency discretion and subject to the doctrine of consular nonreviewability." Mot. at 2.

The APA provides that "within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b). Thus, the APA authorizes a reviewing court to "compel agency action unlawfully withheld or unreasonably delayed." Id. § 706(1). But, the APA does not apply if a statute precludes judicial review or "agency action is committed to agency discretion by law." Id. § 701.

In general, "[a]s the APA does not expressly allow review of the President's actions, we must presume that his actions are not subject to its requirements." Franklin v. Massachusetts, 505 U.S. 788, 801 (1992). However, the Ninth Circuit has found that "under certain circumstances, Executive Orders, with specific statutory foundation, are treated as agency action and reviewed under the [APA]." City of Carmel-by-the-Sea v. United States Dep't of Transp., 123 F.3d 1142, 1166 (9th Cir. 1997). Therefore, "an executive order or presidential proclamation may also be subject to judicial review under the APA and treated as agency action when the order or proclamation 'rests upon statute.' " W. Watersheds Project v. Bureau of Land Mgmt., 629 F. Supp. 2d 951, 965 (D. Ariz. 2009) (quoting Legal Aid Soc'y v. Brennan, 608 F.2d 1319, 1330 n.15 (9th Cir. 1979)).

PP 9645 was issued pursuant to INA § 212(f), 8 U.S.C. § 1182. See Trump v. Hawaii, 138 S. Ct. 2392, 2408 (2018) (finding that PP 9645 was a lawful exercise of the discretion granted by § 1182). As Plaintiffs' Complaint concerns the Government's implementation of PP 9645, not the legality of PP 9645 itself, the Government's

actions are reviewable under the APA. Hawaii v. Trump, 878 F.3d 662, 680-81 (9th Cir. 2017) ("because these agencies have consummated their implementation of the Proclamation, from which legal consequences will flow, their actions are 'final' and therefore reviewable under the APA"), rev'd and remanded on other grounds by Trump v. Hawaii, 138 S. Ct. 2392; see also Najafi v. Pompeo, 2019 WL 5423467 (N.D. Cal. Oct. 23, 2019).

The Government argues that the President's actions are not subject to APA review. Mot. at 14-15. And the Government points out that PP 9645 states that it does not create "any right or benefit, substantive or procedural" against the United States or its agencies and that presidential proclamations cannot be enforced against the Executive Branch. Id. at 13.

But as the Court has already indicated, Plaintiffs are pursuing their APA claims via the theory that the Government is not following its own guidance regarding consideration of waivers and usurping consular officers' authority to grant them. Thus, Defendants' argument is not controlling here. See Emami v. Nielsen, 365 F. Supp. 3d 1009, 1019 (N.D. Cal. 2019).

Further, the Government argues that the APA "does not permit review of waiver determinations" under 5 U.S.C. § 701, because the APA does not apply to agency action "committed to agency discretion by law." Mot. at 14. As the Government notes, PP 9645 commits the grant or denial of waivers to the "discretion" of consular and Customs and Border Protection officers. Id., see 82 Fed. Reg. at 45168. Thus, the Government argues, "even if the delegation of discretion were not expressly committed to another branch, governing law offers no standard to guide a reviewing court to impose a timing requirement on this exercise of discretion." Id.

***5** But Plaintiffs argue that the Government does not have the discretion to refuse to process, withhold decisions, or unreasonably delay considering their waiver requests pursuant to PP 9645. In support of this argument, they point to the State Department's "Operational Q&As on PP. 9645," which states that "every applicant who is subject to the restrictions of the P.P., otherwise eligible for a visa, and to which an exception does not apply" "*must* be considered for a waiver." Opp'n at 16 (emphasis added).

The "must be considered for a waiver" wording in the State Department's "Operational Q&A's" suggests that the Government does not have discretion to never act on Plaintiffs' waiver applications. Therefore, the Court disagrees with the Government that the doctrine of consular non-reviewability precludes judicial scrutiny. Plaintiffs challenge systemic practices with respect to the waiver program, not individualized determinations for their specific applications. The FAC alleges the Government is not abiding by its own guidelines and statements about case-by-case determinations of waiver applications, but instead implementing a policy of blanket denials, by depriving consular officers of the ability to issue waiver decisions. See, e.g., FAC ¶¶ 9-10, 18, 73, 113. Thus, the Court is not required to review any individual consular officer decisions; instead, what is at stake is "the authority of the consul to take or fail to take an action as opposed to a decision taken within the consul's discretion." See Patel v. Reno, 134 F.3d 929, 931-32 (9th Cir. 1997). Accordingly, judicial review of Plaintiffs' APA claims is not precluded.

C. Plaintiffs' APA Claims

1. Unreasonable Delay

The Government argues that Plaintiffs have failed to allege unreasonable delay under the APA, 5 U.S.C. §§ 555(b) and 706(1). Mot. at 17.

The APA requires agencies to conclude matters presented to it within a reasonable time. 5 U.S.C. § 555(b) ("With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it"). Under the APA, courts may "compel agency action unlawfully withheld or unreasonably delayed." Id. § 706(1).

To succeed on such a claim, a plaintiff must establish that the agency has a "discrete" duty to act and that the agency unreasonably delayed acting on that duty. Norton v. S. Utah Wilderness All., 542 U.S. 55, 63-65 (2004). "[F]or a claim of unreasonable delay to survive, the agency *must have a statutory duty* in the first place." San Francisco BayKeeper v. Whitman, 297 F.3d 877, 885 (9th Cir. 2002) (emphasis added). Accordingly, "there can be no unreasonable delay" where "the governing statute does not require action by a certain date." Id. at 885-86.

In considering whether agency delay is unreasonable, courts typically use the six factors endorsed by the Ninth Circuit in Independence Mining Co. v. Babbitt, 105 F.3d 502, 507 (9th Cir. 1997):

> (1) the time agencies take to make decisions must be governed by a "*rule of reason*"; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

***6** (citing Telecommunications Research & Action Center v. FCC, 750 F.2d 70, 80 (D.C. Cir. 1984) (emphasis added). The most important is the first factor, the "rule of reason," though it, like the others, is not dispositive. In re A Cmty. Voice, 878 F.3d 779, 786 (9th Cir. 2017).

Defendants contend that "Plaintiffs have not pointed to any statutory duty regarding waiver issuance or guidance on how quickly an agency must act on a waiver request." Mot at 17. Further, Defendants note that PP 9645 "provides no timeline for waiver adjudication." Id. Accordingly, Defendants argue that there is no "rule of reason," governing the appropriate waiver determination period.

In the FAC, Plaintiffs claim that "Defendants have a nondiscretionary duty 'to conclude a matter presented to it' 'within a reasonable time,' " and have "failed to adjudicate Beneficiary Plaintiffs visa waivers within 90 days." FAC ¶ 109. But Plaintiffs provide no justification, statutory or otherwise, for this 90 day timeframe in their Opposition. Nor do Plaintiffs further address their unreasonable delay claim.

On this record, the Court determines that the lack of a "rule of reason" means Plaintiffs cannot plausibly claim that the delays in processing their waiver requests have been unreasonable under the APA. Therefore, the Court dismisses Plaintiffs' first cause of action under §§ 555(b) and 706(1), without prejudice.

2. Substantive APA Claim

Next, Defendants argue that Plaintiffs fail to state a claim under § 706(2)(A) and (D). Mot. at 20-22.

The APA bars federal agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or is conducted "without observance of procedure required by law." 5 U.S.C. § 706(2)(A) and (D).

Plaintiffs claim that Defendants' requirement for consular managers, visa chiefs, and consular section chiefs to concur with consular officers for final waiver decisions is unlawful as this scheme was not authorized by PP 9645. FAC ¶¶ 118-121. In addition, Plaintiffs' claim that Defendants have "appoint[ed]" "non-DOS employees such as Quality Support, Inc. contractors as designees to adjudicate final waiver decisions." Id. ¶ 122.

Plaintiffs' allegations regarding the propriety of officials other than rank-and-file consular officers participating in the waiver adjudication process do not plausibly support their substantive APA claim. Plaintiffs have not amended their allegations to sufficiently state a claim that the process described violates the APA. Plaintiffs simply do not provide any legal support for their contention that the waiver adjudication process is unlawful. Indeed, the definition of "consular officer" in federal law appears to encompass consular officers who are managers and supervisors, not merely rank-and-file consular officials. See 8 U.S.C. § 1101(a)(9) ("*any consular, diplomatic, or other officer or employee of the United States* designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas ... ") (emphasis added).

Plaintiffs' allegation regarding contractors is also conclusorily stated. The Court agrees with Defendants that the FAC "supports an inference that contractors are, at most, involved in transmitting information related to PP 9645 waivers—Plaintiffs have no support for their assertion that contractors are making the waiver decisions themselves." Reply at 10.

***7** The Court finds that their Complaint fails to plausibly state a claim under §§ 706(2)(A) and (D) and dismisses this cause of action, without prejudice.

D. Fifth Amendment Claim

The Government argues that Plaintiffs fail to state a procedural due process claim, as a matter of law because the FAC "fails to support an inference that any protected liberty or property interest is implicated or that there is some additional process they are entitled to but have been denied." Mot. at 22.

The Fifth Amendment provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." But "an unadmitted and nonresident alien ... has no right of entry into the United States, and no cause of action to press in furtherance of his claim for admission." See Kerry v. Din, 135 S.Ct. 2128, 2131 (2015) (Scalia, J., plurality opinion). Plaintiffs have not adequately alleged that they have been denied due process or were owed additional procedural safeguards; their allegations regarding this claim are conclusory. See Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

As Plaintiffs do not directly allege such a deprivation, the question is whether they were deprived of "certain implied 'fundamental rights' " that are understood to be included under the "liberty" prong. See Kerry v. Din at 2133.

Plaintiffs allege fundamental interests in family members' ability to travel to the United States for the "integrity of the family unit." FAC ¶ 133. They also claim that "the waiver process Defendants have implemented is inherently arbitrary and has deprived Plaintiffs of even the most minimal process that attaches to the statutory benefits conferred to them by Congress." Id. ¶ 142.

However, "the generic right to live with family is far removed from the specific right to reside in the United States with non-citizen family members." See Gebhardt v. Nielsen, 879 F.3d 980, 988 (9th Cir. 2018) (internal citation marks and quotations omitted). A procedural due process analysis involves looking to "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards ...." Mathews v. Eldridge, 424 U.S. 319, 335 (1976). Plaintiffs' allegations regarding the arbitrariness of the waiver adjudication process do not sufficiently explain how they were owed additional or different procedural safeguards, and how the process as it currently is plead results in erroneous deprivations of due process rights.

Plaintiffs' inability to allege a procedural or substantive deprivation of an interest protected by the Due Process Clause means their claim must be dismissed. The dismissal is without prejudice.

E. Equal Protection Claim

Plaintiffs allege that "the irreparable injury and hardship caused by Defendants has denied Plaintiffs the same protection of fundamental rights afforded to visa applicants who had the arbitrary fortune to have their consular interviews scheduled for after early-July 2019, and thus benefit from Defendants' new automated processing." FAC ¶ 147. Plaintiffs claim that Defendants have a history of discriminating against Iranians, and are therefore members of a suspect class. Id. ¶ 149. They allege that "[n]o rational basis exists for why Defendants are using an efficient automated process for adjudicating waivers for new visa applicants, but not using the automated process for adjudicating waivers." Id. ¶ 154.

***8** Plaintiffs do not adequately allege that they, as Iranians, are being treated differently from immigrants of other nationalities; indeed, they allege that a new, enhanced automated screening and vetting process applies "for all immigrant and nonimmigrant visa applicants subject to PP 9645." Id. ¶ 96. Because the basis for the differential treatment Plaintiffs allege is when the new processing system went into effect – i.e., these Plaintiffs had their visa interviews before other applicants – the classification they assert is not a suspect class.

"If the statute does not involve a suspect or quasi-suspect classification, then 'rational basis' review applies, in

which a court must ask whether the statute is rationally-related to a legitimate governmental interest." See Ball v. Massanari, 254 F.3d 817, 823 (9th Cir. 2001).

The Court finds that the screening process survives rational basis review. Indeed, Plaintiffs allege that "[t]he new enhanced review is automated, occurs prior to the interview, and provides consular officers with the information required to make most P.P. 9645 waiver determinations much more quickly .... However, this is not the case with visa applicants like Beneficiary Plaintiffs, who have already had their interviews[.]" FAC ¶ 96. Before the automated review was available, "a post-interview security review by the interagency [sic] would occur "to resolve whether their entry would not pose a threat to the national security or public safety." Id. ¶ 81. These allegations in the FAC, on their own, establish a rational basis for the differences in timing between the processing of Plaintiffs' waiver applications and those that have been submitted more recently.

In their Opposition, Plaintiffs fail to explain how their alleged distinction, based upon when the automated processing system became available, involves a suspect classification or burdens a fundamental right. Accordingly, the Court grants Defendants' motion to dismiss this cause of action, without prejudice.

F. Mandamus Claim

The writ of mandamus is "intended to provide a remedy for a plaintiff only if he [or she] has exhausted all other avenues of relief and only if the defendant owes him [or her] a clear nondiscretionary duty." Heckler v. Ringer, 466 U.S. 602, 616-17 (1984); see also Independence Mining Co. v. Babbitt, 105 F.3d 502, 507 (9th Cir. 1997) ("[T]he Supreme Court has construed a claim seeking mandamus ... in essence, as one for relief under § 706 of the APA.") (internal citations omitted.)

Because the Court has found that Plaintiffs have not adequately alleged that Defendants owe them a clear, nondiscretionary duty, the Court grants dismissal of this cause of action. The dismissal is without prejudice.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motion.

IT IS SO ORDERED.

All Citations

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Footnotes

1 Plaintiffs filed their Amended Complaint on behalf of five families with six visa applicants. FAC, Dkt. No. 77. Subsequently, Plaintiffs Arash Mansour Hardanian and Elaheh Alikhan Zadeh dismissed their claims (Dkt. No. 90) as well as Arash Rafii Sereshki and Bijan Rafii Sereshki. Dkt. No. 83. The remaining Plaintiffs are Parto Kavoosian, N.F. (Minor), Behnaz Kavoosian, Kiyoumars Kavoosian, Masoud Abdi, Shima Montakhabi, Fatemeh Karimi Alamdari, A.S. 1 (minor), A.S. 2 (minor), and Farshad Amirkhani.

2 The Court vacated the March 16, 2020 hearing and gave the parties an opportunity to submit a request for oral argument. Order, Dkt. No. 97. Plaintiffs filed a request for oral argument (Dkt. No. 98), which the Court denies, finding that a hearing in this matter is unnecessary. Fed. R. Civ. P. 78; L.R. 7-15.

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