

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TONY N., et al.,
Plaintiffs,
v.

U.S. CITIZENSHIP & IMMIGRATION
SERVICES, et al.,
Defendants.

Case No. 21-cv-08742-MMC

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Before the Court is defendants' Motion to Dismiss, filed January 21, 2022. Plaintiffs have filed opposition, to which defendants have replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision on the parties' respective written submissions, VACATES the hearing scheduled for March 11, 2022, and rules as follows.

On November 10, 2021, plaintiffs, five individuals who have applied for asylum, filed the above-titled action, alleging defendant United States Citizenship & Immigration Services ("USCIS") failed to timely rule on their applications for renewal of work permits. In particular, plaintiffs allege, it is unreasonable for USCIS to fail to issue a ruling "within the 180-day automatic extension period." (See Compl. ¶ 116; see also Compl., Req. for Relief ¶ (5).)¹ As relief, plaintiffs seek both a declaration that the delay in issuing a ruling is unreasonable and an order compelling USCIS to issue a ruling.

¹ As set forth in more detail in the Court's order of December 22, 2021, the expiration date of an "Employment Authorization Document" issued by USCIS to an asylum seeker is extended by 180 days if certain conditions are met, including the applicant's submission of an application for renewal before the expiration date. (See Order, filed December 22, 2021, at 1:27-28, 3:22-4:2.)

Subsequent to the filing of the instant action, each plaintiff's application for renewal was approved (see Nolan Decl., filed December 5, 2021, ¶¶ 25.a, 25.d; Defs.' Mot., filed January 21, 2022, Exs. A-C), and will remain valid for a period of thirty months from the date of renewal (see Order, filed December 22, 2021, at 4:25), i.e., the renewal period of twenty-four months, followed by the above-referenced 180-day extension period. In light of the issuance of the above-referenced approvals, defendants argue the instant action is now moot and, consequently, should be dismissed for lack of subject matter jurisdiction.

"Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies." Lewis v. Continental Bank Corp., 494 U.S. 472, 477 (1990). "The case or controversy requirement of Article III . . . deprives federal courts of jurisdiction to hear moot cases." NAACP, Western Region v. City of Richmond, 743 F.2d 1346, 1355 (9th Cir. 1984). "A case becomes moot when interim relief or events have eradicated the effects of the defendant's act or omission, and there is no reasonable expectation that the alleged violation will recur." Id.

Here, there is no dispute that a case or controversy no longer exists as to the applications that were pending on the date the action was filed. Although plaintiffs argue there exists a reasonable expectation they will be subjected to allegedly unreasonable delays at the time they again may need to apply for renewal, the Court is not persuaded plaintiffs' prediction of a recurrence that far in the future constitutes more than speculation, given that the reasons for USCIS's delay in adjudicating plaintiffs' most recent applications are, essentially, situational. In particular, USCIS was faced with the onset of a worldwide pandemic with resultant operational and financial impediments (see Nolan Decl. ¶¶ 18-19), a hiring freeze that began in May 2020 and ended in March 2021 (see id. ¶ 19), and, in the aftermath of unrelated litigation filed in 2019 and 2021, an obligatory redirection of limited resources to applications filed by non-asylum seekers (see id. ¶ 20). Under such circumstances, the Court finds plaintiffs have failed to "establish a demonstrated probability that the same controversy will recur involving the same litigants." See Lee v. Schmidt-Wenzel, 766 F.2d 1387, 1390 (9th Cir. 1985).

1 Accordingly, defendants' motion to dismiss is hereby GRANTED, and the instant
2 action is hereby DISMISSED without prejudice. See Newcomb v. United States, 98 F.2d
3 25, 27 (9th Cir. 1938) (holding, where case becomes moot, district court must "dismiss
4 the [case] without prejudice").

5 **IT IS SO ORDERED.**

6
7 Dated: March 2, 2022


MAXINE M. CHESNEY
United States District Judge

United States District Court
Northern District of California