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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-08564 RGK (MLGx)	Date	April 30, 2010
Title	***LUIS FRANCISCO TORRES BARRAGAN and PATRICK CLARK v. ERIC HOLDER, et al***		

Present: The Honorable	R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Sharon L. Williams	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS)** Order re: Defendants' Motion to Dismiss (DE 7)

I. INTRODUCTION

Plaintiffs Luis Francisco Torres Barragan ("Torres") and Patrick Clerk ("Clark") (collectively, "Plaintiffs") bring this suit challenging Defendants' denial of Clark's Form I-130 Petition for Alien Relative filed on behalf of Torres. Plaintiffs allege that the petition was denied in violation of the anti-discrimination provision of the Immigration and Nationality Act ("INA"), the Administrative Procedure Act ("APA"), and the Due Process Clause and Equal Protection requirement[1] of the Constitution, U.S. Const. amend. V. Before the Court is Defendants' Motion to Dismiss. For the reasons offered below, the Court **GRANTS** the Motion.

II. FACTUAL BACKGROUND

Clark is a citizen of the United States. Torres is a citizen of Mexico. Torres and Clark are a same-sex couple and legally married under the laws of the State of California since September 18, 2008. On October 30, 2008, Clark filed an I-130 Petition on behalf of Torres, seeking to classify Torres an "immediate relative." *See* 8 C.F.R. § 204.1(a). The classification is necessary to allow Torres and Clark live together in the United States because Torres has been denied admission to the Untied State otherwise. The United States Citizenship and Immigration Services ("USCIS") denied the Petition. Clark then appealed the denial to the Board of Immigration Appeals. The appeal was also denied. In both instances, the government relied on the Defense of Marriage Act, which limits the definition of marriage between a man and a woman, as reason for the denial of the Petition. Clark and Torres then filed this suit. 1 U.S.C. § 7.

[1] The Fifth Amendment is held to contain an equal protection guarantee similar to that expressly referenced in the Fourteenth Amendment that unlike the latter applies to the federal government. *See Bolling v. Sharpe*, 347 U.S. 497, 498-99 (1954).

III. DISCUSSION

A. Subject Matter Jurisdiction

Defendants argue that this Court lacks jurisdiction to review denial of Plaintiffs' Petition. Yet there is ample persuasive authority–none of which Defendants address–that have held the contrary. *See, e.g., Ruiz v. Mukasey*, 552 F.3d 269 (2nd Cir. 2009); *Ayanbadejo v. Chertoff*, 517 F.3d 273 (5th. Cir. 2008); *Richards v. Napolitano*, 642 F.Supp.2d 118 (E.D.N.Y. 2009); *Ogbolumani v. USCIS*, 523 F.Supp.2d 864 (N.D.Ill. 2007). The Court need not repeat the thorough analysis set forth in these cases to make the same point. *See also Califano v. Sanders*, 430 U.S. 99, 109 (1977)("[W]hen constitutional questions are in issue, the availability of judicial review is presumed, and we will not read a statutory scheme to take the extraordinary step of foreclosing jurisdiction unless Congress' intent to do so is manifested by clear and convincing evidence.")(citations and quotation marks in original omitted). Defendants' argument that this Court lacks jurisdiction to decide the case is unavailing.

B. Equal Protection And Due Process

Plaintiffs argue that the Defense of Marriage Act ("DMA"), 1 U.S.C. § 7, violates the Equal Protection component and Due Process Clause of the Constitution, U.S. Const. amend. V, because the DMA defines marriage exclusively as union between couples of opposite sex. The matter has already been addressed by the Ninth Circuit in *Adams v. Howerton*, 673 F.2d 1036 (9th Cir. 1982). There, the Ninth Circuit held that the agency's interpretation of marriage in the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1151(b), as one that excludes same-sex couples did not violate the Due Process Clause or the right to equal protection. It held that even if fundamental rights were affected by the distinction, rational basis scrutiny applied and found that Congress had a rational basis for treating same-sex and opposite-sex couples differently. *Id.* at 1041. ("We hold that Congress's decision to confer spouse status . . . only upon the parties to heterosexual marriages has a rational basis and therefore comports with the due process clause and its equal protection requirements.").

At the time that *Adams* was decided, the DMA had not been enacted. Yet the enactment of the DMA does not affect the inquiry. The DMA mandates that government agencies limit the definition of marriage between a man and a woman. 1 U.S.C. § 7. That is precisely how the INA was interpreted in *Adams*. That USCIS relied on the DMA to deny Plaintiffs' Petition as opposed to its own interpretation of the INA does not change the fact that binding Ninth Circuit authority dictates that denying I-130 petitions to same-sex couples does not violate the Constitution. Nor does the legality of Plaintiffs' marriage in California help Plaintiffs, as "Congress did not intend the mere validity of a marriage under state law to be controlling." *Adams*, 673 F.2d at 1039. Therefore, Plaintiffs' equal protection claim is barred as a matter of law.

C. Plaintiffs' Remaining Claims

Plaintiffs' remaining claims are not colorable. Plaintiffs claim that the agency's denial of the I-130 Petition was arbitrary and capricious because "Defendants[']s actions are based on a conclusion not in accordance with the law, in violation of the APA." (Compl. ¶¶ 25-26.) *See* 5 U.S.C. § 706(2)(A). But USCIS simply followed the clear mandate of Congress in finding that same-sex couples were not entitled to "immediate relative" status under the INA. Plaintiffs are dissatisfied with the outcome, i.e., with the way the law is written, but that does not make Defendants' following the letter of the law arbitrary or capricious. Plaintiffs' assertion, therefore, is unavailing.

Plaintiffs also assert that the definition of marriage in the DMA violates the prohibition against sex discrimination in the INA. This argument fails for at least two reasons. First, Defendants denied the I-130 Petition not for Plaintiffs' sex, but because of their sexual orientation. The anti-sex discrimination provision of the INA has no application in this context. Second, even if there were some ambiguity as to what the INA prohibits in its anti-sex discrimination provision (which there is not), this Court has an "obligation to . . . construe federal statutes so that they are consistent with each other." *Northern Mariana Islands v. United States*, 279 F.3d 1070, 1074 (9th Cir. 2002)(citation omitted). It would be wrong, therefore, to hold that Congress ran afoul of its own sex-discrimination proscription when it enacted the DMA. That would frustrate the very purpose of the DMA. And it would be similarly unreasonable to hold that Defendants violated the general anti sex-discrimination provision of the INA when they gave effect to the language of the DMA, which could not be any more clear: "the word 'marriage' means only a legal union between one man and one woman." 1 U.S.C. § 7. Therefore, Plaintiffs' last argument is also unavailing.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' Motion to Dismiss.

IT IS SO ORDERED.

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