

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

**‘O’**

<b>Case No.</b>	2:14-cv-06288-CAS(CWx)	<b>Date</b>	September 28, 2015
<b>Title</b>	ABDUL M. KHAN V. JEH JOHNSON ET AL.		

**Present: The Honorable** CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS) - PLAINTIFF’S MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT

The Court finds this motion appropriate for decision without oral argument. See Fed. R. Civ. P. 78; C.D. Cal. Local Rule 7-15. Accordingly, the hearing date of September 28, 2015, is vacated, and the matter is hereby taken under submission.

## **I. INTRODUCTION AND BACKGROUND**

On August 11, 2014 plaintiff filed a complaint against Jeh Johnson (Secretary of the Department of Homeland Security), Alejandro Mayorkas (Director of the United States Bureau of Citizenship and Immigration Services (“USCIS”)), and George S. Mihalko (Director of the Los Angeles Office of the United States Bureau of Citizenship and Immigration Services) (collectively, “defendants”). Compl. In brief, the complaint alleged that defendants unreasonably delayed in adjudicating plaintiff’s I-485 application for an adjustment of citizenship status, and sought a writ of mandamus directing the government to adjudicate his application. Id. On April 17, 2014 the Court, on its own motion, ordered the government to adjudicate plaintiff’s application. Dkt. 36.

On April 28, 2015 USCIS issued plaintiff a “Notice of Intent to Deny” with regard to his application on the ground that plaintiff had provided material support to Muttahida Quami Movement—Altaf Faction (“MQM-A”), a group which the government considers a terrorist organization. Dkt. 25, at 2. On June 16, 2016 defendants filed a “Notice of Administrative Action” indicating that USCIS had denied plaintiff’s I-485 application. Dkt. 28, at 2.

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On June 26, 2015 plaintiff requested that the Court set aside USCIS's denial of his application on the grounds that USCIS was collaterally estopped from denying his application and that the denial lacked factual support. Dkt. 29. In opposing plaintiff's request, defendants argued that the request should be denied because the complaint did not set forth a request to set aside a denial of his application; rather, the complaint only requested that the government adjudicate his application. Dkt. 34., at 2. Furthermore, the government argued that, because plaintiff's application had been adjudicated, plaintiff no longer had an outstanding cause of action. *Id.* Accordingly, the government requested that the Court dismiss plaintiff's case or, in the alternative, that it require plaintiff to move to file an amended complaint. *Id.* at 5.

On July 30, 2015 the Court issued an order dismissing plaintiff's complaint. Dkt. 36. The Court stated that defendants were "correct that the complaint does not plead grounds for the relief [plaintiff] currently seeks, and in any event, the factual record and briefing are at this point insufficient for the Court to evaluate the merits of plaintiff's collateral estoppel argument." *Id.* at 5. Nonetheless, the Court dismissed plaintiff's complaint without prejudice and noted that, because the dismissal was without prejudice, plaintiff could file a motion seeking leave to amend his complaint. *Id.* at 6. On August 26, 2015 plaintiff filed a motion seeking leave to file a first amended complaint. Dkt. 37. On August 31, 2015 defendants filed a notice of non-opposition to plaintiff's motion. Dkt. 38.

## II. DISCUSSION

Federal Rule of Civil Procedure 15 provides that after a responsive pleading has been filed, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a).

Where leave to amend is required, the decision whether to grant leave to amend "is entrusted to the sound discretion of the trial court." Jordan v. County of Los Angeles, 669 F.2d 1311, 1324 (9th Cir. 1982), vacated on other grounds, 459 U.S. 810 (1982). "Five factors are taken into account to assess the propriety of a motion for leave to amend: bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously amended the complaint." Johnson v. Buckley, 356 F.3d 1067, 1077 (9th Cir. 2004) (citing Nunes v. Ashcroft, 348 F.3d 815, 818 (9th

