

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **CV 17-4145 FMO (PLAx)** Date **July 3, 2017**

Title **Cassell Creations, LLC et. al., v. USCIS, et. al.**

Present: The Honorable **Fernando M. Olguin, United States District Judge**

Vanessa Figueroa

None

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorney Present for Plaintiff(s):

Attorney Present for Defendant(s):

None Present

None Present

Proceedings: (In Chambers) Order to Show Cause Re: Dismissal for Lack of Jurisdiction

On June 2, 2017, Cassell Creations, LLC, dba Fine Arts Sculpture Center, Inc., Oleg Kedria, Zhanna Kedria, and Mikhael Kedria (“plaintiffs”) filed a complaint against the United States Citizenship and Immigration Services (“USCIS”) and the director of its California Service Center, Kathy A. Baran (“Baran”) (collectively, “defendants”). (See Dkt. 1, Complaint at ¶¶ 3, 4, 6, 8-10). Plaintiffs allege that defendants’ denial of plaintiffs’ “applications to extend their nonimmigrant O-1 (alien of extraordinary ability) and O-3 (dependents of O-1 nonimmigrant)” visas constituted a “conclusory and unsubstantiated decision” and seek judicial review of the denial under the Administrative Procedure Act. (See *id.* at ¶ 1). Plaintiffs claim this action arises under the Immigration and Nationality Act, 8 U.S.C. § 1101, *et. seq.*, and the Administrative Procedure Act, 5 U.S.C. § 701, *et. seq.*, which are “both laws of the United States,” thus conferring original jurisdiction to the court pursuant to 28 U.S.C. § 1331. (See *id.* at ¶ 10).

Having reviewed the Complaint, however, the court questions whether jurisdiction is proper. While “[a]s a general matter, district courts are empowered to review agency action by the Administrative Procedure Act [], and have federal question jurisdiction over such claims pursuant to 28 U.S.C. § 1331[] . . . there must be final agency action for which there is no other adequate remedy in a court.” *Mamigonian v. Biggs*, 710 F.3d 936, 941 (9th Cir. 2013) (quoting 5 U.S.C. § 704) (emphasis in original; internal citation and quotation marks omitted). “Two conditions must be satisfied for agency action to be final for purposes of the APA: First, the action must mark the consummation of the agency’s decisionmaking process – it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights and obligations have been determined, or from which legal consequences will flow.” *Id.* at 942 (quoting *Bennett v. Spear*, 520 U.S. 154, 177–78, 117 S.Ct. 1154, 1168 (1997); internal quotation marks omitted). Here, the Complaint contains no statements or allegations regarding whether defendants’ denial to extend the Kedrias’ nonimmigrant visas is a final agency decision. (See, generally, Dkt. 1, Complaint).

Based on the foregoing, IT IS ORDERED THAT no later than **July 17, 2017**, plaintiffs shall

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file a First Amended Complaint establishing that the denial of the subject nonimmigrant visas is a final agency decision within the meaning of the APA. Alternatively, plaintiffs may stand on their Complaint and file a written Response to this Order to Show Cause, not to exceed five (5) pages, that discusses why this action should not be dismissed for lack of subject matter jurisdiction. Plaintiffs are cautioned that failure to file a First Amended Complaint or otherwise respond may result in this action being dismissed without prejudice for failure to prosecute and/or failure to comply with a court order. See Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629-30, 82 S.Ct. 1386, 1388 (1962); Edwards v. Marin Park, Inc., 356 F.3d 1058, 1065 (9th Cir. 2004).

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