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

MEGGY CAI LI,

No. C 08-2425 MEJ

Plaintiff,

**ORDER RE DEFENDANTS' MOTION TO
DISMISS AND THE PARTIES' CROSS-
MOTIONS FOR SUMMARY JUDGMENT**

vs.

MICHAEL CHERTOFF, Secretary of the U.S.
Department of Homeland Security; EMILIO T.
GONZALES, Director of U.S. Citizenship and
Immigration Services; CHRISTINA POULOS,
Director, California Service Center, USCIS;
CONDOLEEZA RICE, Secretary of State,

Defendants.

Pending before the Court is Defendants' Motion to Dismiss or for Summary Judgment (Dkt. #5). Also pending before the Court is Plaintiff Meggy Cai Li's Cross Motion for Summary Judgment ("PXMSJ," Dkt. #11). Both parties have filed oppositions and replies. After considering the parties' papers, relevant legal authority, and good cause appearing, the Court hereby rules as follows.

I. BACKGROUND

Plaintiff initiated this action on May 12, 2008, by filing a Complaint for Writ in the Nature of Mandamus (Dkt. #1). In her Complaint, Plaintiff alleges that on March 5, 2004, she filed three I-130 immigration petitions with the United States Citizenship and Immigration Services ("USCIS") California Service Center ("CCS") on behalf of her husband and her two step children. (Compl. at ¶¶2, 10.) On July 10, 2007, USCIS approved the three petitions. (*Id.* at ¶11.) Thereafter, on April

1 22, 2008, a consular officer interviewed Plaintiff's husband and her step children for their related
2 visa applications. (*Id.* at ¶12) At the close of the interview, the officer denied the three visa
3 applications, stating that she did not believe Plaintiff's marriage was bona fide under U.S.
4 immigration law. (*Id.*)

5 Plaintiff alleges that it is her belief that the consular office will delay returning the petition
6 files to USCIS, such that USCIS will be unable to review the request from the consular office to
7 revoke the petitions, and that USCIS will further delay making its decision. (*Id.* at ¶15.) According
8 to Plaintiff, "[s]uch a long delay for the Consular Office to return the petition to the USCIS and
9 USCIS's further delay in making a decision either to revoke the petition, send out request for
10 evidence or reaffirm the petition has damaged and will continue to damage Plaintiff in that she has
11 been separated from her husband and step children for more than six years after the marriage." (*Id.*)
12 Plaintiff thus claims that Defendants "in violation of the Administrative Procedures Act, 5 U.S.C. §
13 701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff['s] I-130
14 petitions, and have failed to carry out the adjudicative functions delegated to them by law with
15 regard to Plaintiff's petitions and her family's visa applications." (*Id.* at ¶ 17.) She requests that the
16 Court enter an order requiring Defendants to expeditiously adjudicate the I-130 petitions and visa
17 applications. (*Id.* at ¶ 18.)

18 As indicated above, Defendants have moved to dismiss this action, and both Defendants and
19 Plaintiff have moved for summary judgment. After briefing closed on the parties' respective
20 Motions, the Court held a hearing on September 25, 2008. (Dkt. #19.)

21 II. DISCUSSION

22 In their Motion, Defendants urge the Court to dismiss this action pursuant to Federal Rule of
23 Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. Alternatively, Defendants ask the
24 Court to grant summary judgment in their favor on the ground that Plaintiff cannot establish that
25 mandamus is warranted in this case. (DMSJ at 1.) In her Cross Motion, Plaintiff urges the Court to
26 grant summary judgment in her favor and to issue a writ of mandamus directing the American
27 Consulate in Guangzhou to expeditiously return the I-130 petitions of her husband and two step
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1 children to the USCIS-CSC, and directing the CSC to expeditiously act upon receipt of said petitions
2 by processing the consular denial of [the] visas to [her] husband and step children[.]" (PXMSJ at 2.)

3
4 **A. Return of the I-130 Petitions**

5 As indicated above, a key component of Plaintiff's mandamus action, and thus a key issue on
6 which both parties have moved for summary judgment, is Plaintiff's request that the Court order the
7 American Consulate in Guangzhou to expeditiously return the three I-130 petitions to the USCIS
8 office. In their Reply, Defendants indicate that on August 1, 2008, the Guangzhou Consulate
9 returned the three I-130 petitions to the National Visa Center. (Def. Reply at 1-2 & Ex. A, Dybdahl
10 Decl., at ¶4.) Thereafter, on August 5, 2008, the National Visa Center forwarded the visa petitions
11 to USCIS. (Def. Reply at 2 & Ex. B, Louis Decl., at ¶7.)

12 At the hearing on the parties' Motions, the Court questioned counsel for both parties about
13 how this development effected the pending Motions and Plaintiff's case. Plaintiff acknowledged that
14 the American Consulate had returned the I-130 petitions to USCIS. However, as stated in her Reply
15 brief, Plaintiff maintained that the return of the petitions did not render her mandamus action moot.
16 Rather, Plaintiff asserted that her Complaint also seeks an order requiring USCIS to expeditiously
17 process the adjudication of the I-130 petitions to conclusion. (Pl. Reply. at 2.)

18 Having considered the parties' arguments in their briefs and at oral argument, the Court finds
19 that there is no genuine dispute as to the fact that the American Consulate in Guangzhou has
20 returned the I-130 petitions relating to Plaintiff's husband and two step children to USCIS. As a
21 result, the relief Plaintiff requested as to this issue - specifically, that the Court order the Consulate
22 to perform this act - has been rendered moot. The Court will therefore DENY AS MOOT both
23 parties' Motions as to this issue. *See Arizonans for Official English v. Ariz.*, 520 U.S. 43, 67 (1997)
24 (noting that, for federal court to adjudicate a matter, an actual controversy must exist throughout all
25 stages of review, not merely at the time the complaint is filed.); *Burnett v. Lampert*, 432 F.3d 996,
26 999 (9th Cir. 2005).

1 **B. Further Action by USCIS**

2 According to Defendants, because the Consulate has returned the I-130 petitions, Plaintiff's
3 entire case has been rendered moot. Alternatively, Defendants argue that, even if the return of the I-
4 130 petitions has not rendered her entire case moot, dismissal of this action is nevertheless
5 appropriate. (Def. Reply at 2-8.) Plaintiff, however, asserts that she continues to suffer damages
6 due to USCIS's delay in processing the Consulate's denial, and thus her case still presents a live
7 controversy for this Court to resolve.

8 During oral argument, the Court questioned both parties extensively on this issue. The Court
9 noted that, at that the time of the hearing, only a month had passed since USCIS had received the
10 petition files back from the Consulate. The Court further questioned Plaintiff whether her claim that
11 USCIS had unreasonably failed to act upon the return of the petitions was ripe given the short time
12 fame that had passed since the Consulate returned the petition files.¹

13 Reviewing the parties' briefs at this juncture, it is clear that the Consulate's return of the
14 petitions directly affected the parties' proffered arguments in favor summary judgment. Particularly,
15 in their respective Reply briefs, the parties shifted focus and began discussing whether the return of
16 the petitions had rendered Plaintiff's entire case moot and whether Plaintiff was still entitled to
17 further relief against USCIS. Because the parties raised these issues in their replies, they never had
18 the opportunity to present full-developed arguments to the Court. The Court therefore finds it
19 imprudent to rule on the truncated arguments at this time. *See Lane v. Dep't of Interior*, 523 F.3d
20 1128, 1140 (9th Cir. 2008) (noting that it is in the district court's discretion whether to consider an
21 argument first raised in a reply brief). Further, at the time briefing closed, less than a month had
22 passed since USCIS had received the petitions. Presently, the parties are in a better position to
23 represent their positions regarding claims of delay on the part of USCIS as it relates to the
24 processing of the three visa petitions.

25 Taking the foregoing facts and developments into consideration, and in the interest of justice,

26 ¹In response, Plaintiff's counsel suggested that the Court stay this case for 90 days. The Court,
27 however, declined that request.

1 efficiency, and fairness to the parties, the Court will DENY WITHOUT PREJUDICE the remainder
2 of the parties' Motions currently pending before the Court to allow both parties an opportunity to file
3 new motions that take into account the events that occurred after they filed their initial Motions.
4 The parties may re-assert any arguments raised in their prior briefs, as well as any new arguments
5 that are relevant to this matter.

6 **III. CONCLUSION**

7 Based on the foregoing analysis, the Court hereby rules as follows:

8 The Court **DENIES AS MOOT** Defendants' Motion to Dismiss or Motion for Summary
9 Judgment (Dkt. #5) and Plaintiff's Cross-Motion for Summary Judgment (Dkt. #11) with respect to
10 Plaintiff's relief directed at the Consulate regarding return of the three petitions.

11 The Court **DENIES WITHOUT PREJUDICE** the remainder of Defendants' Motion to
12 Dismiss or Motion for Summary Judgment (Dkt. #5) and Plaintiff's Cross-Motion for Summary
13 Judgment (Dkt. #11).

14 Within 30 days from the date of this Order, the parties shall file a joint status report or file
15 new motions.

16 **IT IS SO ORDERED.**

17
18 Dated: March 16, 2009



MARIA-ELENA JAMES
United States Magistrate Judge