

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 14-13803-GAO

JOSE FLAVIO DOS SANTOS PENHA,
Plaintiff,

v.

ALEJANDRO MAYORKAS, Director of USCIS, JEH CHARLES JOHNSON, Secretary of
Homeland Security, and ERIC H. HOLDER, JR., United States Attorney General,
Defendants.

ORDER
March 23, 2016

O'TOOLE, D.J.

In this case, the plaintiff, Jose Flavio Dos Santos Penha, seeks to challenge the government's revocation of a Form I-140 Immigrant Petition for Alien Worker granted to his employer that was the basis of his immigration status in this country. The government has moved to dismiss this case arguing, among other things, that this Court lacks subject matter jurisdiction to review discretionary decisions of the Attorney General or the Secretary of Homeland Security to revoke grants of such petitions. See 8 U.S.C § 1252(a)(2)(B)(ii). The plaintiff argues that the statute under which the Form I-140 was revoked, 8 U.S.C. § 1155, is not purely discretionary, and thus this Court has jurisdiction.

The First Circuit recently decided a very similar case. See Bernardo ex rel. M & K Eng'g, Inc. v. Johnson, No. 15-1177, 2016 WL 378918 (1st Cir. Jan. 29, 2016), petition for cert. filed, No. 15-1138 (U.S. Mar. 10, 2016). The First Circuit concluded that the decision to revoke a Form I-140 is discretionary and therefore not subject to judicial review. Id. at *2.

Following the Circuit's decision, I requested additional briefing from the parties concerning the application of Bernardo to this case. Both sides have responded, and the additional briefing makes clear that the plaintiff is requesting review of the merits of the government's decision to revoke the Form I-140. Whether or not the government had good reasons or any reason at all for revoking the petition is irrelevant; this Court cannot inquire into that decision-making process. See id. This Court is without jurisdiction to hear the plaintiff's case.

The government's Motion to Dismiss or, in the Alternative, for Summary Judgment (dkt. no. 17) is GRANTED. This case is DISMISSED without prejudice for want of jurisdiction.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge