

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:18-cv-00153-FDW-DCK

SALEH SHAIBAN and FATIMA)
MUTHANA,)
)
Plaintiffs,)
)
vs.)
)
CHAD F. WOLF¹, Acting Secretary of the)
Department of Homeland Security;)
DEPARTMENT OF HOMELAND)
SECURITY; and KENNETH T.)
CUCCINELLI², Acting Director of the U.S.)
Citizenship and Immigration Services,)
)
Defendants.)
_____)

ORDER

THIS MATTER is before the Court on Plaintiffs’ Second Motion to Amend/Correct the Petition for Declaratory and Injunctive Relief (Doc. No. 26) and Defendants’ Partial Motion to Dismiss (Doc. No. 23). For the reasons stated in open court during the hearing held on January 30, 2020, the Court GRANTS Plaintiffs’ Second Motion to Amend and DENIES as MOOT Defendants’ Partial Motion to Dismiss.

The Court further grants the parties until March 2, 2020 to brief the issue of whether this Court retains subject matter jurisdiction in this action in light of the USCIS denial of Plaintiff Shaiban’s petition to adjust his status from “asylee” to lawful permanent resident. Specifically, counsel shall advise the Court why the jurisdictional limits under 5 U.S.C § 701(a)(2) and 8 U.S.C.

¹ Acting Secretary Chad F. Wolf is automatically substituted for his predecessor, Acting Secretary Kevin McAleenan, who resigned on October 11, 2019. See Fed. R. Civ. P. 25(d).

² Acting Director Kenneth T. Cuccinelli is automatically substituted for his predecessor, Director Cissna, who was replaced effective June 2, 2019. See Fed. R. Civ. P. 25(d).

§ 1252 do not apply now that USCIS has made a final decision on Plaintiffs' applications. The Court refers the parties to the Fourth Circuit cases of Lee v. US Citizenship and Immigration Services, 592 F.3d 612 (4th Cir. 2010) and Roland v. U.S. Citizenship and Immigration Services, 850 F.3d 625 (4th Cir. 2017), both of which inform the Court's concern that a serious jurisdictional defect exists in the present case.

IT IS, THEREFORE, ORDERED that Plaintiffs' Second Motion to Amend/Correct the Petition for Declaratory and Injunctive Relief (Doc. No. 26) is GRANTED; Defendants' Partial Motion to Dismiss (Doc. No. 23) is DENIED as MOOT; and the parties shall submit briefings on the jurisdictional issues in this matter by March 2, 2020.

Signed: January 30, 2020



Frank D. Whitney
Chief United States District Judge

