
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MERCEDES CAPENER,

Plaintiff,

v.

JANET NAPOLITANO, Secretary of
Department of Homeland Security, et al.
Defendants.

**MEMORANDUM DECISION and ORDER
ADOPTING REPORT AND
RECOMMENDATIONS**

Case No. 2:11-CV-601-DN-DBP

District Judge David Nuffer

This case was referred to Magistrate Judge Dustin Pead under [28 U.S.C. § 636\(b\)\(1\)\(B\)](#).¹ After extensive briefing on the issues raised,² Judge Pead issued the Report & Recommendations (R & R)³ recommending that this court: (1) FIND it has subject matter jurisdiction over Plaintiff's amended complaint; (2) AFFIRM Defendants' decision to deny Plaintiff's adjustment Application because Defendants did not violate [5 U.S.C. § 706\(2\)\(A\)](#); and (3) DENY Plaintiff's request for injunctive relief.⁴

The parties were notified of their right to file objections within 14 days of being served with a copy of the R & R.⁵ No objections to the R & R were filed or received by the court.

¹ Order Referring Case, docket no. 28, filed September 10, 2012.

² Defendants' Brief in Response to Plaintiff's Amended Complaint, [docket no. 26](#), filed August 17, 2012; Plaintiff's Reply to Defendants' Response, [docket no. 27](#), filed September 6, 2012; Defendants' Response to Plaintiff's Reply, [docket no. 29](#), filed September 20, 2012; Request for Supplemental Briefing, [docket no. 31](#), filed November 21, 2012; Clarification re Request for Supplemental Briefing, docket no. 32, filed November 22, 2012; Defendants' Supplemental Brief, [docket no. 34](#), filed December 21, 2012; Plaintiff's Supplemental Briefing, [docket no. 35](#), filed December 21, 2012; Order Requesting Plaintiff Provide Supplemental Briefing on Jurisdictional Issue, docket no. 37, filed April 25, 2013; Plaintiff's Second Supplemental Briefing, [docket no. 38](#), filed May 10, 2013.

³ Report and Recommendations, [docket no. 39](#), filed October 16, 2013.

⁴ *Id.* at 14.

⁵ *Id.*

The court has conducted a review of the issues and finding no clear error,⁶ agrees with Judge Pead's thorough analysis, conclusions and recommendations. Accordingly, the R & R is adopted as the order of this court.

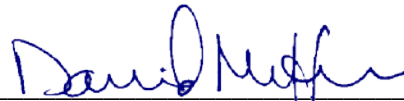
ORDER

IT IS HEREBY ORDERED that the R & R⁷ is ADOPTED as the order of the court.

IT IS FURTHER ORDERED that the court: (1) FINDS it has subject matter jurisdiction over Plaintiff's amended complaint; (2) AFFIRMS Defendants' decision to deny Plaintiff's adjustment Application because Defendants did not violate [5 U.S.C. § 706\(2\)\(A\)](#); and (3) DENIES Plaintiff's request for injunctive relief. The clerk is directed to close this case.

Signed November 7, 2013.

BY THE COURT



District Judge David Nuffer

⁶ See [28 U.S.C. § 636\(b\)\(1\)](#) (requiring de novo review of only “those portions of the report or specified proposed findings or recommendations to which objection is made”) and [Fed.R.Civ.P. 72\(b\)\(3\)](#) (same). See also, *Ocelot Oil Corp. v. Sparrow Industries*, 847 F.2d 1458, 1464 (10th Cir.1988) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948)) (“The clearly erroneous standard . . . requires that the reviewing court affirm unless it ‘on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’”).

⁷ [Docket no. 39](#).