

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IRFAN AHMED, :
Plaintiff : CIVIL ACTION NO.
v. : 3-00-CV-1728 (JCH)
: :
JANET RENO, Attorney General :
of the United States, :
Defendant. : JANUARY 17, 2001

RULING ON DEFENDANT’S MOTION TO DISMISS [DKT. NO. 5]

This is a cause of action for declaratory judgment challenging a decision by U.S. immigration officials declaring the plaintiff, Irfan Ahmed (“Ahmed”), ineligible for adjustment of status after he had been found to be inadmissible to the United States. The defendant, U.S. Attorney General Janet Reno (“Attorney General”), filed a motion to dismiss. Because the court finds that it lacks subject matter jurisdiction to review the decision of the Attorney General in this case, the motion to dismiss is granted.

I. FACTUAL BACKGROUND

Ahmed is a native and citizen of Pakistan. At an unspecified time, he entered the United States fraudulently by using a passport issued to another individual. He was therefore found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act. 8 U.S.C. § 1182(a)(6)(C)(i). Ahmed subsequently married a United States citizen. He then sought a waiver of the

finding of inadmissibility under § 212(i), which provides that the Attorney General may use her discretion and waive inadmissibility where “the refusal of admission to the United States . . . would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.” 8 U.S.C. § 1182(i). The application for waiver was denied by the District Director of the Immigration and Naturalization Service (“INS”) because the applicant failed to establish that extreme hardship would be imposed on a qualifying relative.

Ahmed appealed the decision of the District Director. In support of his claim of extreme hardship, he submitted a psychiatric evaluation of his wife and information about the dangers she would face visiting him in Pakistan were he forced to return. On June 19, 2000, the Office of Administrative Appeals affirmed the District Director’s decision finding Ahmed statutorily ineligible for relief because he failed to show that a qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. The Office of Administrative Appeals noted that, because it found that Ahmed had not met the statutory requirement of demonstrating extreme hardship on a qualifying family member, it did not address whether he would merit a waiver as a matter of discretion.

On September 8, 2000, Ahmed filed a “Petition for Declaratory Judgment” in

this court seeking a declaratory judgment that the Appeals' decision was invalid because the Office of Administrative Appeals abused its discretion in discounting the evidence provided by the plaintiff.

II. DISCUSSION

Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss a case for lack of subject matter jurisdiction. FED. R. CIV. P. 12(b)(1). The burden of proving jurisdiction is on the party asserting it. See Malik v. Meissner, 82 F.3d 560, 562 (2d Cir. 1996). On a motion to dismiss for lack of subject matter jurisdiction, however, a court must accept all factual allegations in the complaint as true and draw all inferences from those allegations in plaintiff's favor. Jaghory v. New York State Dept. of Educ., 131 F.3d 326, 329 (2d Cir. 1997). The court may not dismiss a complaint unless "it appears beyond doubt, even when the complaint is liberally construed, that the plaintiff can prove no set of facts which would entitle him to relief." Id.

Ahmed requested a waiver of inadmissibility under § 212(i) of the Immigration and Naturalization Act ("INA"). Section 212(i)(1) gives the Attorney General discretion to waive inadmissibility due to fraud where "it is established to the satisfaction of the Attorney General that the refusal of admission to the United

States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.” 8 U.S.C. § 1182(i)(1).¹

Section 212(i)(2) goes on to state that “[n]o court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).”

8 U.S.C. § 1182(i)(2). The Attorney General argues that the decision of the Office of Administrative Appeals to deny Ahmed’s application for waiver was “a decision or action of the Attorney General regarding a waiver” and, thus, this court lacks subject matter jurisdiction to review that decision. Ahmed responds that the court has subject matter jurisdiction because he is asking the court to review a the Attorney General’s interpretation of § 212(i)(1), not to review a discretionary decision.

In 1996, Congress enacted the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996) (“AEDPA”), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, 110 Stat. 3009 (1996) (“IIRIRA”). Both statutes made significant changes to the INA, 8 U.S.C. § 1101-1537. Those changes affected the

¹ Section 212(i)(1) was amended on October 28, 2000 by inserting the following before the period at the end of the clause: “or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.” Victims of Trafficking and Violence Protection Act 2000, Pub. L. No. 106-386, 114 Stat. 1464. The amendment is not applicable to this case.

jurisdiction of federal courts to review immigration decisions. See Avramenkov v. INS, 99 F.Supp. 2d 210, 211 (D.Conn. 2000). Specifically, section 349 of the IIRIRA amended § 212(i) to prohibit federal court jurisdiction to review decisions under that section.

In Henderson v. INS, the Second Circuit found that Congress intended IIRIRA to make “the law now . . . much like it was prior to enactment of the INA,” when “deportation orders were nonreviewable to the fullest extent possible under the Constitution.” 157 F.3d 106, 119 (2d Cir. 1998) (internal citation omitted). The Constitution has not historically authorized judicial review of merely discretionary decisions made by executive agencies and the provisions of IIRIRA similarly restrict federal court jurisdiction. Avramenkov, 99 F.Supp. 2d at 213; see also Goncalves v. Reno, 144 F.3d 110, 125 (1st Cir. 1998); Yang v. INS, 109 F.3d 1185, 1195 (7th Cir. 1997). Federal courts have the power to review constitutional challenges to immigration laws or to the Attorney General’s “interpretation” of them, but not to review discretionary decisions of the Attorney General. Compare Henderson, 157 F.3d at 120-122 (holding that, even after the 1996 amendments, courts have jurisdiction to grant writs of habeas corpus to aliens in cases involving statutory interpretation), with Avramenkov, 99 F.Supp. 2d at 213-14 (finding the court had no jurisdiction to review the Attorney General’s discretionary decision to

transfer an alien from one locale to another to commence removal proceedings).

Ahmed argues that, while the court does not have jurisdiction to review the Attorney General's discretionary decisions, this court has jurisdiction because this is not a deportation case and because Ahmed filed a petition for declaratory judgment rather than a petition for writ of habeas corpus. The court disagrees. First, the fact that this is not a deportation case is irrelevant. Nothing in § 212(i) limits its reach to deportation proceedings. Rather, § 212(i) limits jurisdiction of any "action or decision" of the Attorney General regarding a waiver of a finding of inadmissibility. Therefore, the fact that Ahmed is not seeking review of a final deportation order does not affect the jurisdiction of this court.

Second, the fact that Ahmed filed a petition for declaratory judgment does not change the fact that he is asking this court to review a discretionary decision of the Attorney General. The same limits that would apply to a petition for writ of habeas corpus or any other petition for review of the Attorney General's decision thus apply to the petition in this case. In his "Petition," Ahmed specifically "challenges a decision of immigration officials declaring him ineligible for adjustment of status." Petition for Declaratory Judgment [Dkt. No. 1]. The

Petition makes no reference to a constitutional or other interpretive challenge.² It asks the court to declare the decision of the immigration officials invalid. Id. In his Memorandum in Support of Petition for Declaratory Judgment, Ahmed states that the discretion for determining extreme hardship rests with the immigration service and asks the court to find that the INS abused its discretion. Memorandum in Support of Petition for Declaratory Judgment [Dkt. No. 3] at 1-2. Further, in his Petition, Ahmed alleges the § 212 decision is “unreasonable and capricious.” Petition for Declaratory Judgment [Dkt. No. 1] at 1.

Under § 212(i)(2), the court has no jurisdiction to make a finding that the Attorney General, through the INS, abused her discretion. Section 212(i)(2) prohibits the court from reviewing an “action or decision” by the Attorney General regarding a waiver under § 212(i)(1). In this case, the Office of Administrative

² While Ahmed states in his opposition to the motion to dismiss [Dkt. No. 7], “[c]onstitutional challenges to the interpretation of immigration laws remain in the court’s purview,” there is nothing in his “Petition for Declaratory Judgment” to indicate that he is making a constitutional challenge. Petitioner’s Response [Dkt. No. 7] at 2. In his opposition, Ahmed appears to assert that his wife’s due process rights have been violated. Id. at 4. He makes this conclusory assertion, though, without citing any cases or explaining his assertion. In addition, his assertion is still tied to a discretionary decision of the Attorney General. In discussing his wife’s due process rights, Ahmed refers to the “error” committed by the Attorney General in the face of the “substantial evidence” of hardship. Id. at 4. Such an assertion, “clothed in constitutional garb[,] . . . [is] nothing more than a reframed attack on the discretionary extreme hardship determination over which this court has no jurisdiction.” Bernal-Vallejo v. INS, 195 F.3d 56, 63 (1st Cir. 1999).

Appeals affirmed the District Director's decision that Ahmed had not demonstrated that his wife would suffer "extreme hardship" if he were not granted the waiver. Such a determination is an "action or decision" regarding a waiver under § 212(i)(1). Therefore, the statute specifically precludes judicial review of that decision. While Ahmed's request for relief may have been made in a petition for declaratory judgment rather than an application for review or petition for writ of habeas corpus, the request is for this court to review a discretionary decision by the Attorney General. The court has no jurisdiction to do so.

The court could still have jurisdiction if the decision in this case were a non-discretionary determination under a specific legal standard. Section 212(i)(2) limits judicial review of any "action or decision" of the Attorney General in relation to the waiver of inadmissibility. The same language is used in the more generally applicable 8 U.S.C. § 1252(a)(2)(B)(ii), which provides that no court has jurisdiction to review any decision or action the Attorney general makes under 8 U.S.C. §§ 1151-1378. 8 U.S.C. § 1252(a)(2)(B)(ii). Such language insulates discretionary decisions of the Attorney General from judicial review. Avramenkov, 99 F. Supp.2d at 213; Curri v. Reno, 86 F. Supp.2d 413, 416, 418 (D.N.J. 2000) (concluding that "[s]ection 1252(g) completely eliminated the statutory jurisdiction of courts regarding the decisions of the INS pertaining to its authority to commence

proceedings, adjudicate cases, and execute removal orders”). Despite this limit, in addition to constitutional challenges to statutory interpretation, courts maintain jurisdiction to review non-discretionary factual determinations subject to specific legal standards. Bernal-Vallejo v. INS, 195 F.3d 56, 62 (1st Cir. 1999) (finding that court maintained jurisdiction to review non-discretionary decisions where statute stated “there shall be no appeal of any discretionary decision”). Such non-discretionary decisions might include, for example, whether a minimum residency requirement has been met or whether a spouse is a citizen. Id.

In this case, determining whether a spouse would suffer “extreme hardship” was a discretionary decision. See Bernal-Vallejo, 195 F.3d at 63 (holding that extreme hardship determination under IIRIRA § 309(c)(4)(E) is a discretionary decision); Moosa v. INS, 171 F.3d 994, 1012-13 (5th Cir. 1999) (same); Kalaw v. INS, 133 F.3d 1147, 1152 (9th Cir. 1997) (same). Unlike the standard for determining residency or citizenship, no specific legal standard exists for determining whether a party meets the extreme hardship requirement. Rather the statute calls for “extreme hardship” to be “established to the satisfaction of the Attorney General.” 8 U.S.C. § 1182(i)(1). As such, the decision of whether the Attorney General abused her discretion in determining that extreme hardship had not been established under § 212(i)(1) is a discretionary one, outside the jurisdiction of this court.

The decision of the Office of Administrative Appeals was a discretionary decision outside of the jurisdiction of the court. In addition, Ahmed has not raised a constitutional or interpretive issue that this court has the jurisdiction to review. Because § 212(i)(2) thus prohibits this court from reviewing the decision of the Office of Administrative Appeals, Ahmed has failed to demonstrate that this court has subject matter jurisdiction. The defendant's motion to dismiss the case for lack of subject matter jurisdiction is therefore granted.³

III. CONCLUSION

For the foregoing reasons,⁴ the Defendant's Motion to Dismiss [Dkt. No. 5] is GRANTED. The case is dismissed and the clerk is directed to close the case.

³ The court recognizes that, under current Second Circuit law, it may have habeas corpus jurisdiction. See Henderson, 157 F.3d at 122; Jean-Baptiste v. Reno, 144 F.3d 212, 220 (2d Cir. 1998). However, Ahmed clearly framed his "Petition" as one seeking declaratory judgment and brought under 28 U.S.C. § 2201. In addition, Ahmed disavows any relief under 28 U.S.C. §§ 2241-2255. See Petitioner's Response [Dkt. No. 7] at 4.

⁴ In his response to the motion to dismiss, Ahmed also argued that the motion to dismiss was "fatally defective" because it did not contain the federal identification number for its signatory. The court notes that the motion to dismiss filed with the court contained the identification number in writing. Further, regardless of any defect in the papers filed or served in this case, the court is bound to dismiss the case for lack of subject matter jurisdiction where no jurisdiction exists. FED. R. CIV. P. 12(h)(3).

SO ORDERED.

Dated at Bridgeport, Connecticut this 17th day of January, 2001.

_____/s/_____
Janet C. Hall
United States District Judge