



U.S. Department of Justice

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February 9, 2016

BY ECF AND INTEROFFICE MAIL

Honorable Ann M. Donnelly
United States District Judge
Eastern District of New York
Brooklyn, New York 11201

Re: *6801 Realty Co., LLC v. USCIS, et al.*
CV 15-5958

Dear Judge Donnelly:

This letter is written in anticipation of the pre-motion conference in the above-referenced matter, scheduled for February 11, 2016. For the reasons stated herein, and in our prior submission, *see* Dkt. No. 20, this action should be dismissed for lack of subject matter jurisdiction.

As this Court is aware, in a decision dated July 30, 2014, Defendant United States Citizenship and Immigration Services(USCIS) denied a petition filed by Plaintiff under 8 U.S.C. § 1101(a)(15)(H)(i)(B). On October 15, 2015, over fourteen months later, Plaintiff filed a complaint in this Court challenging that decision.

Thereafter, on November 4, 2015, the decision was reopened by USCIS and on December 16, 2015, a Request For Evidence(RFE) sent to Plaintiff. Dkt. No. 20. Following the issuance of the RFE, Plaintiff served Defendants. Dkt. 12, 14-18.

Relying primarily on *Doctors Nursing & Rehabilitation Center v. Sebelius*, 613 F.3d 672 (7th Cir. 2010), Plaintiff argues that USCIS did not have the authority to reopen the decision once this Court had jurisdiction over it. Dkt. No. 21. However, and to the contrary, in this Circuit, the granting of a motion to reopen by the Immigration authorities after a case has been filed means that there no longer is a final decision to review and that therefore the court is divested of jurisdiction. *See Lopez-Ruiz v. Ashcroft*, 298 F.3d 886, 887 (2d Cir. 2002).

Further, even were *Doctors Nursing & Rehabilitation Center* the law in this Circuit, which it is not, it would still be inapplicable to this matter, as that case is “limited to actions filed under 42 U.S.C. § 405(g), the statute that provides for judicial review of a Social Security Administration decision and specifically provides that the SSA can reopen proceedings by filing a motion to remand with the court.” *Hornbeck Offshore Services, LLC et al v. Salazar*, 2010 WL 3523040 at *3-4(E.D. La. Sept. 1, 2010).

Rather, in cases such as the present one, which do not involve 405(g), or where the statute does not provide a limitation on the ability to reopen¹, courts have uniformly held that a district court no longer has jurisdiction over a decision once the case has been reopened. Dkt. No. 20 at 2(citing cases relating to (H)(i)(B) petitions or other immigration-related petitions); *see also Shenouda v. Roark*, 2009 WL 4782098 at *1-2(D. Mass., Sept. 9, 2009)(immigrant visa case); *West Lake Auto Inc. v. USCIS*, 2005 WL 2994513 at * 3-4(D. Minn., Nov. 8, 2005).

Finally, even if it was the law of this Circuit, which it is not, that USCIS could not reopen a decision denying an (H)(i)(B) application once a district court had jurisdiction over a case, this action would still have to be dismissed, as this Court did not have jurisdiction over this matter at the time the decision was reopened. Indeed, the decision here was reopened on November 4, 2015. Dkt. No. 20. However, service was not affected on the parties until well after that time. Dkt. Nos. 12, 14-18. Accordingly, the Court did not have jurisdiction over the decision at the time the matter was reopened. *See Omni Capital Intern., Ltd. v. Rudolf Wolff & Co. Ltd.*, 484 U.S. 97, 104 (1987)(before a court has personal jurisdiction over a defendant, the procedural requirement of service of a summons must be satisfied).

Thank you for your consideration.

Respectfully submitted,

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¹ *See Bustamante v. Napolitano*, 582 F.3d 403(2d Cir. 2009 (finding that case filed under 8 U.S.C. § 1447(b) relating to delay in the adjudication of a naturalization application, vested exclusive jurisdiction in the courts over that application, because of language in the statute.