

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Saleh v. Blinken

Saleh · No. 5:24-cv-02450-EJD · Decided March 25, 2025

SUMMARY

The Northern District of California denied defendants’ motion to dismiss an action challenging the refusal of a U.S. Embassy consular officer to accept a directly filed Form I-130 petition. The court held that the Foreign Affairs Manual provided a meaningful standard for reviewing the agency’s exercise of discretion under the Administrative Procedure Act and that consular non-reviewability did not categorically apply because no visa application had been denied. The court also held that the U.S. citizen plaintiff plausibly alleged a protected property interest in his own I-130 petition under Ninth Circuit precedent.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Edward J. Davila
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 25, 2025
DOCKET	5:24-cv-02450-EJD
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs brought claims under the Administrative Procedure Act, the Fifth Amendment Due Process Clause, and the Declaratory Judgment Act challenging the denial of a request to directly file a Form I-130 petition at the U.S. Embassy in Djibouti. Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6).
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts factual allegations as true, construes the pleadings in the nonmoving party's favor, and determines whether the complaint contains sufficient factual matter to state a plausible claim for relief.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential

PARTIES

Mahmood Ahmed Fadhl Saleh, S.M.A.F. v. Antony Blinken, United States Secretary of State, Ambassador to Djibouti, Embassy of the United States of Djibouti, United States Department of State

TOPICS

visa petitions administrative procedure act judicial review of agency action due process
motions to dismiss

PRACTICE AREAS

immigration law administrative law constitutional law civil procedure foreign affairs

QUESTIONS PRESENTED

1. Whether the consular officer's denial of Saleh's request to direct-file an I-130 petition was committed to agency discretion by law and therefore categorically unreviewable under the Administrative Procedure Act.
2. Whether Saleh alleged a constitutionally protected property interest in his own I-130 petition sufficient to support a due process claim.
3. Whether the doctrine of consular non-reviewability barred claims challenging the denial of a request to direct-file an I-130 petition rather than a denial of a visa application.

HOLDINGS

1. The decision to deny a request to direct-file an I-130 petition was not categorically committed to agency discretion by law because the Foreign Affairs Manual supplied meaningful standards for reviewing whether the agency rationally exercised its discretion in light of exceptional circumstances, including threats to personal safety.
2. Saleh adequately alleged a constitutionally protected property interest in the adjudication and approval of his own I-130 petition, even though his daughter had no constitutional right to immigrate and Saleh did not have a liberty interest in his daughter being admitted to the United States.
3. Consular non-reviewability did not bar plaintiffs' claims because the challenged action was not a denial of a visa application; it was a denial of Saleh's request to direct-file his own I-130 petition with the Embassy.

KEY QUOTATIONS

“The Court agrees with Plaintiffs that this well-established policy supplies a meaningful standard to review agency actions under Heckler and its progeny.” (at 8)

“Using these standards, a consular officer’s decision to deny a direct filing based upon a finding that the circumstances do not meet the FAM’s definition of “threats to personal safety” is reviewable by the Court under the APA.” (at 9)

“He has a clearly established property interest in his own petition to establish that S.M.A.F. is his daughter under Ching, and this interest is entitled to the protections of due process.” (at 11)

FACTUAL BACKGROUND

Mahmood Saleh, a naturalized U.S. citizen, sought to file a Form I-130 petition for his minor daughter, S.M.A.F., who was born after USCIS approved an I-130 petition for Saleh's wife and apparently required a separate petition to immigrate to the United States. Because Yemen was unsafe and Saleh's family was residing in Djibouti under precarious and financially burdensome circumstances, Saleh requested to direct-file the petition at the U.S. Embassy in Djibouti under the Foreign Affairs Manual's exceptional-circumstances policy. The Embassy denied the request after communications between Saleh's counsel, the Embassy, and a U.S. Attorney.

PROCEDURAL HISTORY

Plaintiffs filed this action after the Embassy denied Saleh's requests to directly file an I-130 petition for his minor daughter. Defendants moved to dismiss, arguing that the decision was committed to agency discretion, that plaintiffs lacked a constitutionally protected interest, and that consular non-reviewability barred the claims. The court denied the motion to dismiss in its entirety.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008)
- Helgeson v. Bureau of Indian Affairs, 153 F.3d 1000, 1003 (9th Cir. 1998)
- Traynor v. Turnage, 485 U.S. 535, 542 (1988)
- Abbott Laboratories v. Gardner, 387 U.S. 136, 140-41 (1967)
- Califano v. Sanders, 430 U.S. 99 (1977)
- ANA Int'l, Inc. v. Way, 393 F.3d 886, 890-91 (9th Cir. 2004)
- Bouarfa v. Mayorkas, 604 U.S. 6 (2024)
- Pinnacle Armor, Inc. v. United States, 648 F.3d 708, 718-21 (9th Cir. 2011)
- Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv., 586 U.S. 9, 23 (2018)
- Heckler v. Chaney, 470 U.S. 821, 829-30 (1985)
- Lincoln v. Vigil, 508 U.S. 182, 191 (1993)
- Beno v. Shalala, 30 F.3d 1057, 1066 (9th Cir. 1994)
- INS v. Yueh-Shaio Yang, 519 U.S. 26, 32 (1996)
- Jajati v. United States Customs & Border Prot., 102 F.4th 1011, 1017 & n.1 (9th Cir. 2024)

- *Newman v. Apfel*, 223 F.3d 937, 943 (9th Cir. 2000)
- *Socop-Gonzalez v. INS*, 272 F.3d 1176 (9th Cir. 2001)
- *Ahmed v. Cissna*, 327 F. Supp. 3d 650, 671 (S.D.N.Y. 2018), *aff'd sub nom. Ahmed v. Cuccinelli*, 792 F. App'x 908, 910 (2d Cir. 2020)
- *Al Saidi v. U.S. Embassy in Djibouti*, 544 F. Supp. 3d 289, 297 (E.D.N.Y. 2021)
- *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004)
- *Ching v. Mayorkas*, 725 F.3d 1149, 1156 (9th Cir. 2013)
- *Hanan v. USCIS*, No. 23-cv-2414-HSG, 2024 WL 4293917, at *11 (N.D. Cal. Sept. 25, 2024)
- *Department of State v. Muñoz*, 602 U.S. 899, 904-09, 916 (2024)
- *Allen v. Milas*, 896 F.3d 1094, 1104 (9th Cir. 2018)
- *Spencer Enters. v. United States*, 345 F.3d 683, 691 (9th Cir. 2003)

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