UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

DAISY RODRIGUEZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	3:25-CV-182-KAC-DCP
	)	
U.S. DEPARTMENT OF STATE, et al.;	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER DISMISSING ACTION

This action is before the Court on the "Motion to Dismiss" [Doc. 26] filed by Defendants U.S. Department of State; Secretary of State Marco Rubio; the U.S. Embassy Guatemala City; the Consul General, U.S. Embassy Guatemala City; and the Chief, Immigrant Visa Section, U.S. Embassy Guatemala City. Because the doctrine of consular nonreviewability bars this Court from further reviewing the Executive's decision to deny the relevant visa, the Court grants Defendants' Motion [Doc. 26] and dismisses this action.

I. Background[1]

Santos Maudilio Saucedo Rivas is a "Guatemalan citizen who came to the United States in 2006 without inspection" [Doc. 1 ¶ 1]. Plaintiff Daisy Rodriguez "is a U.S. citizen" [*Id.*]. She "married" Saucedo Rivas in 2017 [*Id.*].

Once married, Plaintiff and Saucedo Rivas began the process of seeking lawful immigration status for Saucedo Rivas [*Id.* ¶¶ 2, 8]. Ultimately, consular officials with the U.S. Embassy in Guatemala City interviewed Saucedo Rivas three (3) times [*Id.* ¶ 9]. "During the

[1] Because Plaintiff is the nonmoving Party, the Court construes the Complaint in the light most favorable to her, accepts the well-pleaded factual allegations as true, and draws all reasonable inferences in her favor. *See Royal Truck & Trailer Sales and Serv. Inc. v. Kraft*, 974 F.3d 756, 758 (6th Cir. 2020) (citation omitted).

second interview, a female officer told Mr. Saucedo Rivas he was lying about his past and not to make excuses about his tattoos" [*Id.* ¶ 10]. "During the third interview, another officer, who was large and whom Mr. Saucedo Rivas found to be physically intimidating, again accused Mr. Saucedo Rivas of lying about his tattoos and of insulting the officer's intelligence when Mr. Saucedo Rivas tried to respond to the officer's accusations" [*Id.*]. And "the large officer said Mr. Saucedo Rivas looked like a gangster and a 'convicto' (convict in English) and that his appearance was how the officer knew Mr. Saucedo Rivas was in Barrio Azteca" [*Id.* ¶ 11]. "The officer said he knew Mr. Saucedo Rivas was guilty, so he should confess to make everything go easier on him" [*Id.*]. The officer also "slammed his hands on the desk and shouted at Mr. Saucedo Rivas, making him [Saucedo Rivas] concerned that the officer could become physically violent" [*Id.*].

After the consular interviews, a "consular officer informed" Plaintiff and Saucedo Rivas that "the visa was denied under 8 U.S.C. § 1182(a)(3)(A)(ii)" [*Id.* ¶ 12]. "Based on the officers' prior statements, it is no secret that the denial was based on Mr. Saucedo Rivas' alleged membership in Barrio Azteca" [*Id.*].

Following the initial decision, Plaintiff and Saucedo Rivas "attempt[ed] to overcome the denial by providing exculpatory evidence" [*See id.* ¶¶ 13, 15]. "Of the 1,806 immigrant visas denied under 8 U.S.C. § 1182(a)(3)(A)(ii) ('any other unlawful activity') statutory provision from Fiscal Years 2000 to 2023, not a single person has been able to overcome the presumption of ineligibility" [*Id.* ¶ 14 (citation omitted)]. They "submitted evidence that generally presented Mr. Saucedo Rivas as being of good moral character" [*Id.* ¶ 15]. The State Department "replied that it had not changed its conclusion" [*Id.*].

Then, Plaintiff and Saucedo Rivas "submitted additional evidence" from "three highly credible experts on Barrio Azteca" [*Id.*]. Counsel for Plaintiff and Saucedo Rivas "encouraged

Defendant U.S. Embassy Guatemala City to contact the three experts to clarify any outstanding concerns they may have had" [*Id.* ¶ 19]. "Defendants made no attempt to contact any of the experts" [*Id.* ¶ 20]. "[T]he Embassy reiterated the inadmissibility finding[,] and Mr. Saucedo Rivas remains in Guatemala" [*Id.*¶ 20].

Plaintiff filed suit, raising three claims [Doc. 1]. In Count One, the Complaint alleges that Defendants violated the requirements of *United States ex rel. Accardi v. Shaughnessy*[2] by "fail[ing] to follow" State Department regulations [*See id.* at 8-9]. Count Two contends that the process through which Defendants denied Saucedo Rivas a visa violated the Administrative Procedure Act [*See id.* at 9]. And Count Three states that Plaintiff has a "First Amendment right to associate and speak in person with her husband," presumably requiring that he be permanently admitted into the United States, and that Defendants "denied his visa in bad faith" in violation of Plaintiff's right [*See id.* at 10-11]. As relief, Plaintiff asks the Court to declare her arguments correct and "[o]rder Defendants to reconsider Mr. Saucedo Rivas' immigrant visa application including a meaningful review of, and factoring in the exculpatory evidence submitted" [*See id.* at 12].

Defendants move to dismiss the Complaint, arguing that the doctrine of consular nonreviewability precludes review of the claims and that no exception applies that would permit the relief Plaintiff seeks [*See* Doc. 26]. Plaintiff opposes arguing, as relevant here, that (1) her *Accardi* and APA claims fall outside of the doctrine and (2) her First Amendment claim is reviewable under the doctrine and Defendants failed to provide a facially legitimate and bona fide reason to deny the visa [*See* Doc. 33]. Defendants replied [Doc. 36].

[2] 347 U.S. 260 (1954).

II. Analysis

To survive a motion to dismiss under Rule 12(b)(6), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Phillips v. DeWine*, 841 F.3d 405, 414 (6th Cir. 2016) (quotation omitted). "Threadbare recitals of all the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). And the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Id.* (internal quotation and citation omitted).

"For more than a century," the Supreme Court "has recognized that the admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'" *Dep't of State v. Munoz*, 602 U.S. 899, 907 (2024) (quoting *Trump v. Hawaii*, 585 U.S. 667, 702 (2018)). "The Immigration and Nationality Act (INA) does not authorize judicial review of a consular officer's denial of a visa; thus, as a rule, the federal courts cannot review those decisions." *Id.* "This principle is known as the doctrine of consular nonreviewability." *Id.* A narrow exception exists if the denial "implicates the constitutional rights" of a United States citizen. *Baaghil v. Miller*, 1 F.4th 427, 432 (6th Cir. 2021). There "a court may review the decision solely to determine whether the consulate provided a facially legitimate reason for its visa decision." *Id.* (citations omitted). The Supreme Court has "assumed" that the exception also allows the Court to consider whether the Executive gave a "bona fide" reason for the denial. *Munoz*, 602 U.S. at 908 (cleaned up). If the Executive provides a facially legitimate and bona fide reason, "the inquiry is at an end." *See Munoz*, 602 U.S. 908.

Here, the doctrine of consular nonreviewability precludes the Court from reviewing the

claims in Counts One and Two.[3] Consular nonreviewability "predates the passage of the" Administrative Procedure Act. *Baaghil*, 1 F.4th at 434 (citations omitted). And the APA's "general authority to challenge a 'legal wrong' caused by the" government "does not offer an 'avenue for review of a consular officer's adjudication of a visa on the merits.'" *Id.* at 434-35 (quoting *Allen v. Millas*, 896 F.3d 1094, 1108 (6th Cir. 2018)); *see also Amiri v. Sec'y, Dep't of Homeland Security*, 818 F. App'x 523, 528 (6th Cir. 2020) ("the APA does not provide an end-run around the consular non-reviewability doctrine"). And consular nonreviewability extends "even when a plaintiff challenges some other, related aspect of the consular officer's decision to deny a visa." *Pak v. Biden*, 91 F.4th 896, 901 (7th Cir. 2024). Both Counts One and Two ask the Court to review the merits of the Executive's decision denying Saucedo Rivas a visa [*See* Doc. 1 ¶¶ 23-26, 28]. But the consular nonreviewability doctrine plainly precludes this. *See Munoz*, 602 U.S. at 908.

Resisting this conclusion, Plaintiff makes two arguments. Both fail. ***First***, she argues that she "challenges Defendants' failure to follow the regulations applicable to post-denial exculpatory evidence—not the visa denial itself" [Doc. 33 at 4]. But assessing the Executive's decision-making in denying the visa is precisely the thing the consular nonreviewability doctrine prohibits, absent an exception. *See Munoz*, 602 U.S. at 908. So that argument fails.

Second, Plaintiff argues that she challenges the State Department's alleged policy of ignoring "the regulations for reviewing exculpatory evidence post-visa denial," not the visa denial itself [*See* Doc. 33 at 7]. But the Complaint belies that assertion [*See* Doc. 1]. Counts One and

[3] Saucedo Rivas is not a party in this action. No party has raised Plaintiff's standing to bring Counts One and Two. But the Court has an independent obligation to ensure that it has jurisdiction over the claims. To that end, the Supreme Court has "recognized that an American individual who has 'a bona fide relationship with a particular person seeking to enter the country . . . can legitimately claim concrete hardship if that person is excluded.'" *Trump*, 585 U.S. at 698 (quoting *Trump v. IRAP*, 582 U.S. 571, 583 (2017)).

Two are based on the Executive's decision to deny Saucedo Rivas a visa, not some overarching challenge to State Department policy [*See id.* ¶¶ 22-26, 28-29]. A one-paragraph reference to statistics regarding how often immigrants have "overcome the presumption of ineligibility" is not enough to plead a State Department policy, let alone challenge it [*See id.* ¶ 14]. And unlike in *Pietersen v. U.S. Dep't of State*, these Counts do not raise "forward-looking challenges to the lawfulness of regulations or policies governing consular decisions." *See* 138 F.4th 552, 560 (D.C. Cir. 2025) (quotation omitted). Instead, Plaintiff asks the Court to review the regulations and policies as the Executive specifically applied them to Saucedo Rivas and "[o]rder Defendants to reconsider Mr. Saucedo Rivas' immigrant visa application" [*See* Doc. 1 at 12]. The doctrine of consular nonreviewability bars that request.

Count Three suffers the same fate. Plaintiff argues that she has a First Amendment right "to associate and speak in person with her [noncitizen] husband" requiring the Executive to permanently admit him into the United States, that is implicated by the visa denial [*See* Doc. 1 ¶ 31]. The Court could not locate Supreme Court or Sixth Circuit precedent espousing this right, and Plaintiff cites none. Instead, the law, without deciding the issue, appears to point in the other direction. *See, e.g.*, *Baaghil*, 1 F.4th at 433 ("An American resident has no right to have his noncitizen spouse enter or remain in the United States."); *Munoz*, 602 U.S. at 911-12 ("[T]he through line of history is recognition of the Government's sovereign authority to set the terms governing the admission and exclusion of noncitizens"). But, even if Plaintiff had a First Amendment right that was implicated, this Court may review the Executive's decision only to determine whether it gave a facially legitimate and bona fide reason for denying the visa.

Here, the Executive did. A consular officer informed Plaintiff and Saucedo Rivas that the Executive denied the visa under 8 U.S.C. § 1182(a)(3)(A)(ii) [Doc. 1 ¶ 12]. Section

1182(a)(3)(A)(ii) provides a basis for denial—that an "alien" would "seek[] to enter the United States to engage" in "unlawful activity." 8 U.S.C. § 1182(a)(3)(A)(ii). Under Sixth Circuit precedent and Supreme Court dicta, "[e]ven a 'statutory citation' to the pertinent restriction, without more, suffices" to meet the Executive's burden. *Baaghil*, 1 F.4th at 432 (citing *Trump*, 585 U.S. at 703). Against this, Plaintiff argues that the Executive had to provide more than a statutory citation because Section 1182(a)(3)(A)(ii) lacks "discrete factual predicates" sufficiently illuminating the basis for denial [*See* Doc. 33 at 21-22]. The D.C. Circuit has rejected this argument with respect to Section 1182(a)(3)(A)(ii). *See Colindres v. U.S. Dep't of State*, 71 F.4th 1018, 1024 (D.C. Cir. 2023). And the undersigned would join the D.C. Circuit, if it were necessary.

And even if Plaintiff were entitled to something more than a statutory citation identifying the precise factual predicate for denial, Plaintiff knows why the Executive denied the visa. By her account, "it is no secret that the denial was based on Mr. Saucedo Rivas' alleged membership in Barrio Azteca" [Doc. 1 ¶ 12]. Membership in a criminal organization is a facially legitimate and bona fide basis to deny a visa. *See Baaghil*, 1 F.4th at 432; *see also Colindres*, 71 F.4th at 1024.

That leaves Plaintiff's "bad faith" argument [*See* Doc. 33 at 22]. Even if an "affirmative showing of bad faith on the part of the consular officer" could show that the Executive's decision was not "bona fide," *see Kerry v. Din*, 576 U.S. 86, 105 (2015) (Kennedy, J., concurring in the judgment), Plaintiff has not shown bad faith here. *But see Yafai v. Pompeo*, 912 F.3d 1018, 1022 (7th Cir. 2019) (Barrett, J.) (questioning "how much latitude—if-any—courts have to look behind a decision that is facially legitimate and bona fide to determine whether it was actually made in bad faith"). Under Plaintiff's theory, she must still "plausibly allege[] with sufficient particularity" facts that amount to bad faith. *See Din*, 576 U.S. at 105 (Kennedy, J., concurring in the judgment). "The presumption of regularity supports the official acts of public officers, and, in the absence of

clear evidence to the contrary, courts presume that they have properly discharged their official duties." *United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926) (emphasis added).

The Complaint lacks sufficient evidence of bad faith. When it comes to the Executive's role in ensuring the security of our Nation, allegations of aggressive interview tactics, mistrust of an interviewee, and incredulity are not enough [*See* Doc. 1 ¶¶ 9-11]. Even accepting Plaintiff's framing and out-of-circuit law, the failure to consider specific documents alone is not bad faith. *See Cardenas v. United States*, 826 F.3d 1164, 1172 (9th Cir. 2016). This is especially true where, as here, the criticism is not that the Executive failed to review documents provided but that the Executive did not embrace Plaintiff's "encourage[ment]" to "contact" her "experts to clarify any outstanding concerns" [*See* Doc. 1 ¶ 19]. And nothing in the Complaint indicates that the consular officers (1) "did not in good faith believe the information" they had or (2) "acted upon information" they "knew to be false." *See Khachatryan v. Blinken*, 4 F.4th 841, 852 (9th Cir. 2021) (cleaned up). At bottom, even if the Court were to reach all the way to Plaintiff's bad faith argument, the Complaint fails to show it. So, the Court's "inquiry is at an end" *See Munoz*, 602 U.S. at 908.

III. Conclusion

For the above reasons, the Court **GRANTS** Defendants' "Motion to Dismiss" [Doc. 26] and **DISMISSES** this action. An appropriate judgment shall enter.

SO ORDERED.

KATHERINE A. CRYTZER
United States District Judge