

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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WEI GUANG LUO, )  
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 Plaintiff-Petitioner, )  
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 v. ) C.A. No. 13-183 S  
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 ERIC H. HOLDER, Attorney General; )  
 DEPARTMENT OF HOMELAND SECURITY; )  
 JANET NAPOLITANO, Secretary, )  
 Department of Homeland Security; )  
 UNITED STATES CITIZENSHIP & )  
 IMMIGRATION SERVICES; ALEJANDRO )  
 MAYORKAS, Director, United States )  
 Citizenship & Immigration Services; )  
 and RON ROSENBERG, Acting Chief, )  
 Administrative Appeals Office, )  
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 Defendants-Respondents. )  

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**OPINION AND ORDER**

WILLIAM E. SMITH, Chief Judge.

In a written decision dated December 4, 2012, the United States Citizenship and Immigration Services ("USCIS") Administrative Appeals Office ("AAO") denied Wei Guang Luo's ("Luo") waiver application appeal pursuant to § 212(i)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)(1). Because this Court lacks jurisdiction to hear Luo's appeal, Defendants' Motion to Dismiss (ECF No. 9) is GRANTED.

## I. Facts

In September 1994, Luo, a native and citizen of China, attempted to enter the United States with a fraudulent Japanese passport, leading to the commencement of exclusion proceedings against him. (Compl. ¶ 9, ECF No. 1.) While these proceedings were pending before an immigration judge in New York, Luo married a United States citizen. (Id. at ¶ 10.) The immigration judge issued an exclusion order in June 1996. (Id.) Thereafter, Luo's wife filed a Petition for Alien Relative with the Immigration and Naturalization Service on his behalf. (Id.) This petition was approved in November 1998. (See ECF No. 1-2.) However, the record suggests that Luo subsequently filed an application for adjustment of status with the USCIS which was denied as a matter of discretion in 1998. (Compl. ¶ 10.)

Luo then hired new counsel, who filed a motion to reconsider the denial with the New York district office of the USCIS. (Id.) The USCIS denied the waiver in 2005. (Compl. ¶ 10.) The record indicates that the denial was eventually vacated, but the USCIS again denied the waiver in 2007 despite Luo's opportunity to provide additional evidence in support of his motion. (Id. at 10-11.) Luo appealed the 2007 denial to the AAO, which dismissed the appeal in February 2011. (See ECF No. 1-3.) Later that month, Luo filed a motion with the AAO to reopen and reconsider his application, attaching additional

supporting documentation. (Compl. ¶ 12.) In December 2012, the AAO affirmed the denial of Luo's waiver application after reviewing his case in its entirety, finding that Luo had not "establish[ed] his eligibility for a waiver of inadmissibility based on extreme hardship to a qualifying relative . . . ." <sup>1</sup> (See ECF No. 1-4.) Luo is now before this Court seeking declaratory judgment that the denial of his waiver of inadmissibility by the AAO was in error.

## II. Jurisdiction

Unless a statute precludes review or a decision is one of agency discretion, any agency action which causes an individual to suffer a legal wrong is entitled to judicial review within a district court pursuant to the Administrative Procedures Act ("APA"). 5 U.S.C. §§ 701(a), 702 (2007). Any alien who seeks admission to the United States by fraud or misrepresentation of a material fact is inadmissible for legal entry. Immigration & Nationality Act of 1952 ("the Act"), 8 U.S.C. § 1182(a)(6)(C)(i) (2013). However, § 212(i)(1) of the Act provides as follows:

The [Secretary of Homeland Security] may, in [her] discretion . . . waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary of Homeland Security] that the refusal

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<sup>1</sup> Luo's qualifying relatives for purposes of the waiver are his lawful permanent resident mother and his United States citizen wife.

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)(2).

Despite the exception provided for in § 212(i)(1), 8 U.S.C. § 1182(i)(2) precludes judicial review of discretionary hardship determinations. See Rodríguez-Nascimento v. Gonzáles, 485 F.3d 60, 62 (1st Cir. 2007); see also Chen v. Napolitano, 651 F. Supp. 2d 63, 69 (S.D.N.Y. 2009). Courts can, however, review challenges to such discretionary decisions where the petitioner asserts a question of law or a constitutional claim. Rodríguez-Nascimento, 485 F.3d at 62. Nonetheless, courts will carefully scrutinize these petitions for judicial review, as “courts are wary of attempts to secure review by invoking the rhetoric of a constitutional claim or question of law to disguise what is essentially a quarrel about fact-finding or the exercise of discretion.” Chen, 651 F. Supp. 2d at 70 (quoting Xiao Ji Chen v United States Dep’t of Justice, 471 F.3d 315, 330 (2d Cir. 2006) (quotation marks omitted)).

This Court finds that Luo’s argument that the denial of his waiver application constituted an error of law is unsupported by the record. Unlike the authority Luo presents, where the AAO failed to consider submitted evidence and seriously mischaracterized other evidence, here Luo does not dispute that

the AAO considered all of his proffered evidence. See Mendez v. Holder, 566 F.3d 316, 323 (2d. Cir. 2009); Chen, 651 F. Supp. 2d at 71 (holding that an error of law occurred where the AAO's decision failed to consider critical evidence submitted by petitioner in support of his claim of extreme hardship). Rather, he asserts that a question of law exists due to the manner in which the AAO conducted its analysis and the decision it rendered.

This Court finds it telling that Luo does not cite, nor is the Court aware of, a case in which a district court has held that it had jurisdiction where the AAO denied a waiver application after reviewing all of the evidence submitted by the petitioner. Even assuming arguendo that an error of law was committed, Luo's case in this Court would nevertheless remain futile: courts of appeal, not district courts, possess jurisdiction over such claims. See Shabaj v. Holder, 718 F.3d 48, 51-52 (2d Cir. 2013) ("[T]he district court did not have jurisdiction to review [petitioner's] challenge to [an administrative agency's] discretionary hardship determination . . . [P]etitions for review raising constitutional claims or questions of law must be filed in the appropriate court of appeals." ) (emphasis in original).

"A 'constitutional claim' or 'question of law' may arise . . . where a discretionary decision is argued to be an abuse of

discretion because it was made without rational justification . . . .” Chen, 651 F. Supp. 2d at 69 (quoting Barco-Sandoval v. Gonzales, 516 F.3d 35, 41 n.6 (2d Cir. 2008)). The AAO provided a thorough decision in which it detailed the evidence considered and provided a rational basis for rendering the denial. (See ECF No. 1-4.) The AAO balanced the equities for and against Luo’s claim and reviewed his original and supplemental evidence in its entirety, ultimately deciding not to grant Luo a waiver of inadmissibility. As such, it acted within the bounds of its discretion in issuing the denial, foreclosing the possibility for judicial review. See Zajanckauskas v. Holder, 611 F.3d 87, 89 (1st Cir. 2010). Accordingly, Defendants’ Motion to Dismiss is GRANTED.

IT IS SO ORDERED.



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William E. Smith  
Chief Judge  
Date: March 18, 2014