**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| **DANGYRA SABATAITYTE,** | **:** | **CIVIL ACTION** |
| **A77-721-943** | **:** | |
| | **:** | |
| | **:** | |
| **v.** | **:** | **NO. 04-4130** |
| | **:** | |
| | **:** | |
| **COLIN L. POWELL,** | **:** | |
| **HEAD OF UNITED STATES** | **:** | |
| **DEPARTMENT OF STATE** | **:** | |

## MEMORANDUM

**Diamond, J.** **September 27, 2004**

Dangyra Sabataityte petitions for a Writ of Mandamus, seeking to compel the Secretary of State to readjudicate her immigrant visa application for the 2004 Immigrant Diversity Visa Lottery Program. Because this Court is without jurisdiction, I deny her Petition and dismiss the Complaint.

## BACKGROUND

Petitioner first arrived in the United States from Lithuania on April 24, 2000, with a J-1 non-immigrant student visa that was valid until October 29, 2000. (Complaint at ¶ 9). On October 26, 2000, Petitioner filed an application for an F-1 non-immigrant student visa to extend her stay until February 24, 2001. (Id.).

Petitioner remained in the United States, and on January 23, 2002, almost a year after her

F-1 visa expired, she requested asylum. (Id.). On May 10, 2002, the INS issued a Referral Notice to Petitioner, providing that: (1) she was unable to show by clear and convincing evidence that her application was filed within one year of her last arrival, and (2) her application for asylum was being referred to an Immigration Judge, to whom she could again direct her asylum request. (Complaint at Ex. 5). On May 15, 2002, the INS served Petitioner with a Notice to Appear at an INS removal hearing. (Complaint at Ex. 6).

A year later, on approximately May 28, 2003, the State Department notified Petitioner that she had been selected and registered for further consideration in the Immigrant Diversity Visa Lottery Program for fiscal year 2004 (October 1, 2003 to September 30, 2004). (Complaint at Ex. 9). On December 18, 2003, Petitioner voluntarily withdrew her asylum petition. (Complaint at ¶ 9). On March 11, 2004, she was granted a voluntary departure date of April 16, 2004. (Complaint at Ex. 8). On April 16, 2004, Petitioner left the United States and returned to Lithuania. (Id.).

On June 14, 2004, Petitioner appeared for an interview at the United States Embassy in Warsaw to obtain an immigrant visa based on her selection in the 2004 Immigrant Diversity Visa Lottery Program. (Complaint at ¶ 11). At her interview, Petitioner was told that she appeared to have a criminal record in the United States, and that the Consulate would investigate the matter. (Id.). On July 6, 2004, the Warsaw Consulate informed Petitioner that she was ineligible for a visa because she had been present in the United States unlawfully for more than one year. (Complaint at ¶ 13).

On August 31, 2004, Petitioner filed a Complaint for Declaratory Relief in the Nature of Mandamus with this Court, seeking to compel the Secretary of State to readjudicate her visa application. See 28 U.S.C. § 1361(2004).

## STANDARD OF REVIEW

The Secretary of State has moved to dismiss for want of jurisdiction. I must review that Motion under Fed. R. Civ. P. 12(b)(1). The Rule requires the Court to accept as true the allegations contained in a complaint, but does not require the Court to draw any inferences in favor of the plaintiff. See Gould Elecs., Inc. v. United States, 220 F.3d 169 (3d Cir. 2000). If the claims made in a complaint are "wholly insubstantial and frivolous" or clearly cannot support jurisdiction, the Court may dismiss the complaint. See Gould Elecs., Inc. v. United States, 220 F.3d 169 (3d Cir. 2000); Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-1409 (3d Cir. 1991) (internal citations omitted).

## DISCUSSION

Ms. Sabataityte asks me to compel the Secretary to readjudicate her application for an immigrant visa under the 2004 Immigrant Diversity Visa Lottery Program. I must deny her Petition and dismiss the Complaint because the Court lacks jurisdiction to review this matter.

Federal Courts do not have jurisdiction to review judgments regarding alien admissibility made by Executive Branch Officers outside the United States. See Ahmed v. INS, Case No. 01 C 6542, 2002 U.S. Dist. LEXIS 39 at *4-*7 (N.D. Ill. January 3, 2002) (stating that federal courts may not review consular decisions); see also Kleindienst v. Mandel, 408 U.S. 753, 766, 33 L. Ed. 2d 683, 92 S. Ct. 2576 (1972) ("The Supreme Court has repeatedly admonished that the judicial branch should not intervene in the executive's carrying out the policy of Congress with respect to exclusion of aliens.") (internal quotations omitted); Bruno v. Albright, 197 F.3d 1153 (D.C. Cir. 1999); Burrafato v. Department of State, 523 F.2d 554, 556-57 (2d Cir. 1975) ("The power of

[C]ongress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention, is settled by our previous adjudications."), cert. denied, 424 U.S. 910, 96 S. Ct. 1105, 47 L. Ed. 2d 313 (1976); Loza-Bedoya v. Immigration and Naturalization Service, 410 F.2d 343, 347 (9th Cir. 1969).

Although a judgment that an alien should be deported from the United States or excluded at a port of entry is subject to judicial review, the Immigration and Naturalization Act ("INA") includes *no* such provision for Executive Branch decisions regarding matters occurring *outside* the United States, such as whether to grant individual alien visas. Compare 8 U.S.C. § 1252, with 8 U.S.C. §§ 1157, 1182(d), 1201(g). See generally Haitain Refugee Center, Inc. v. Baker, 953 F.2d 1498 (11th Cir. 1992) (per curiam), cert. denied, 502 U.S. 1122 (1992) (the INA, the Administrative Procedure Act, and international law do not authorize judicial review of Executive decisions made outside the United States); Brownell v. We Shung, 352 U.S. 180, 186 (1956) (the Administrative Procedure Act does not confer federal jurisdiction over claims for declaratory judgment made by aliens "bringing action[s] from abroad").

As long as the State Department considers the merits of an immigration application, this Court may not change the Department's decision. See Loza-Bedoya, 410 F.2d at 346-47 (even where the Executive Officer's decision rests on erroneous information or a failure to adhere to pertinent regulations, Federal Courts do not have jurisdiction to review that decision). Ms. Sabataityte does not dispute that the Warsaw Consulate adjudicated her application on the merits. (Complaint at ¶ 9). She agrees that the Consulate denied the application because it determined

that she had been present in the United States unlawfully. (Id.). She asks me to review the merits of that consular determination, contending that she was not here unlawfully. (Complaint at ¶ 23). The law is absolutely clear, however, that this Court does not have jurisdiction to conduct such a review. See Loza-Bedoya, 410 F.2d at 346-47. Accordingly, I must deny Ms. Sabataityte's Petition and dismiss her Complaint.

Although the Secretary also bases his motions on alternative grounds, I need not address them in light of my decision to dismiss for want of jurisdiction.

An appropriate order follows.

BY THE COURT:

_____ _____

Date Paul S. Diamond, J.

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| **COLIN L. POWELL, HEAD OF** | **:** | |
| **UNITED STATES DEPARTMENT** | **:** | |
| **OF STATE** | **:** | |

**ORDER**

AND NOW, this 27th day of September 2004, for the reasons given in the accompanying Memorandum Opinion, it is ORDERED that the Complaint of the Petitioner for Declaratory Relief in the Nature of Mandamus is **DISMISSED**.

The Clerk of Court shall close this matter for statistical purposes.

**BY THE COURT**

_____ _____

**Date** **Paul S. Diamond, J.**