

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

KIRILL SYCHEV,

Plaintiff,

v.

ANTONY BLINKEN, in his official capacity  
as Secretary of State, *et al.*,

Defendants.

Civil Action No. 20-3484 (CKK)

**MEMORANDUM OPINION**

(January 30, 2023)

This visa action is before the Court on the parties’ [33] and [34] supplemental memoranda addressing the applicability of the “consular nonreviewability doctrine” to this case. On March 30, 2022, the Court held in abeyance Defendants’ [15] Motion to Dismiss as to all defendants related to the United States Department of State, granting the rest of the Motion. *Sychev v. Jaddou*, Civ. A. No. 20-3484 (CKK), 2022 WL 951378, at \*6 (D.D.C.). The Court refers the reader for background on that case, and the Court incorporates that background and analysis herein. At the time, a State Department consular officer had sent Plaintiff’s visa application back to the Department of Homeland Security for further processing. *Id.* at \*2. Because it appeared that a consular officer had not made a *final* decision, the Court directed the parties to submit supplemental briefing on whether *that* decision was a “consular decision” not subject to judicial review. *Id.* at \*4.

Since then, a State Department consular officer *has* made a final decision on Plaintiff’s visa application, denying it by finding Plaintiff ineligible pursuant to 8 U.S.C. § 1201(g). Declaration of Rachel Ann Peterson, ECF No. 33-1 ¶ 3. “[A] consular officer’s decision to issue or withhold a visa [is shielded] from judicial review, at least until Congress says otherwise.”

*Baan Rao Thai Rest. v. Pompeo*, 985 F.3d 1020, 1024 (D.C. Cir. 2021). The denial here is, in fact, a final decision on a visa application, and Congress has not otherwise said it is subject to judicial review. *See Polyzopoulos v. Garland*, Civ. A. No. 20-0804 (CKK), 2021 WL 1405883, at \*5-6 (D.D.C. Apr. 14, 2021). This decision, therefore, is “a power to be exercised exclusively by the political branches of government.” *Kleindienst v. Mandel*, 408 U.S. 753, 765 (1972).

In an effort to find an exception, Plaintiff relies on *Kerry v. Din*, 576 U.S. 86 (2015) (plurality op.), to summarily allege some bad faith on the part of the consular officer. ECF No. 34 at 5-6. True, in that case, the Supreme Court repeated the narrow exception to the doctrine of consular nonreviewability where a plaintiff can demonstrate some constitutional violation in the review and denial of their application. *See* 576 U.S. at 101. Yet, even assuming such an allegation were in Plaintiff’s operative complaint, he pleads no facts rendering such a broad, unsubstantiated legal conclusion facially plausible. *See Baan Rao*, 985 F.3d at 1029. As such, Plaintiff’s complaint has been mooted by subsequent events, the nonreviewable denial of his application.

\* \* \*

Plaintiff’s visa application having been finally decided, the Court is powerless to vacate that decision. Therefore, the remainder of Defendants’ [15] Motion to Dismiss is **GRANTED** and Plaintiff’s [1] Complaint is **DISMISSED**. An appropriate order accompanies this Memorandum Opinion.

Dated: January 30, 2023

/s/  
COLLEEN KOLLAR-KOTELLY  
United States District Judge