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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NUNG FA TAN; RUI YE LI,

Plaintiffs - Appellants,

v.

ERIC H. HOLDER JR., Attorney General,
U.S. Attorney General; CONDOLEEZA
RICE, U.S. Secretary of State; ROBERT
GOLDBERG, Consul General, United
States Consulate, Guangzhou China;
JONATHAN SCHARFEN, Acting
Director, U.S.C.I.S.,

Defendants - Appellees.

No. 09-55329

D.C. No. 2:08-cv-05275-VBF-RC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Submitted April 6, 2010**
Pasadena, California

Before: FERNANDEZ, SILVERMAN, and GRABER, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Plaintiffs Nung Fa Tan and Rui Ye Li appeal the district court's order dismissing their complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief could be granted. We have jurisdiction under 28 U.S.C. § 1291 and now affirm.

After the United States Consulate in Guangzhou, China, denied Li's visa application, Plaintiffs filed a complaint in federal district court against the Consul General in Guangzhou, China, the Acting Director of USCIS, and other government officials. The first through fourth causes of action in the complaint alleged violations of the Immigration and Nationality Act and accompanying regulations, the Administrative Procedure Act, and the Freedom of Information Act. "[I]t has been consistently held that the consular official's decision to issue or withhold a visa is not subject either to administrative or judicial review." *Bustamante v. Mukasey*, 531 F.3d 1059, 1061 (9th Cir. 2008) (quoting *Li Hing of Hong Kong, Inc. v. Levin*, 800 F.2d 970, 971 (9th Cir. 1986)) (alteration in original). Because the decisions of consular officers are not subject to judicial review on non-constitutional claims, *see id.* (noting "a limited exception to the doctrine where the denial of a visa implicates the constitutional rights of American citizens"), the district court properly dismissed the first through fourth causes of action for lack of subject matter jurisdiction.

Plaintiffs' fifth and sixth causes of action alleged that Defendants "are depriving Plaintiff Li of her right to family unity" and "are depriving Plaintiff Li of adjustment of status as a permanent resident" without due process of law. The district court properly dismissed these causes of action because Li is not a U.S. citizen. *See id.* at 1062 ("[A] U.S. citizen raising a constitutional challenge to the denial of a visa is entitled to a limited judicial inquiry regarding the reason for the decision.").

After noting the deficiencies in Plaintiffs' complaint, the district court dismissed the complaint with leave to amend. Plaintiffs did not file an amended complaint, so the district court properly dismissed the case.

AFFIRMED.