

2007 WL 2126495

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United States District Court, N.D. California,
Oakland Division.

Yinan ZHANG, Alia Ahmadi, Zhong Fu, Abdul
Ghafoor, Miao Ling Huang, Sana Jalili, Yan Wang,
Yan Yin, Plaintiffs-Petitioners,

v.

David STILL, District Director, U.S. Department
of Homeland Security, Bureau of Citizenship and
Immigration Services, San Francisco District;
Emilio T. Gonzalez, Director, U.S. Department of
Homeland Security, Bureau of Citizenship and
Immigration Services; Michael Chertoff, U.S.
Secretary of Homeland Security; Robert S. Mueller
III, Director of the Federal Bureau of Investigation;
Alberto Gonzales, Attorney General of the United
States, Defendants-Respondents.

No. C 07-0503 SBA. | July 23, 2007.

Opinion

ORDER TO SHOW CAUSE

SAUNDRA BROWN ARMSTRONG, United States
District Judge.

*1 On January, 24, 2007, Plaintiff Yinan Zhang commenced this action by filing a Petition for Hearing on Naturalization Application under 8 U.S.C. § 1447(b). Docket Report No. 1. On February 8, 2007 Alia Ahmadi, Zhong Fu, Abdul Ghafoor, Miao Ling Huang, Sana Jalili, Yan Wang, and Yan Yin joined the action filed by Zhang, and all plaintiffs filed a First Amended Complaint for Declaratory and Injunctive Relief and Petition for Naturalization Pursuant to 8 U.S.C. § 1447(b). Docket No. 4. On April 30, 2007 Defendants filed a Motion to Dismiss, which is scheduled for hearing on July 31, 2007. Docket No. 27.

On June 12, 2007 Ahmadi, Fu, Ghafoor, Huang, Jalili, Want, and Yin filed a Notice of Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1), stating that Zhang had elected not to continue as a putative class representative and has retained new counsel to represent him individually. Docket Report No. 32. On June 26, 2007 this Court dismissed the claims of Alia Ahmadi, Zhong Fu, Abdul Ghafoor, Miao Ling Huang,

Sana Jalili, Yan Want, and Yan Yin without prejudice. Docket No. 34. On July 2, 2007 the remaining plaintiffs filed a new action: *Ahmadi v. Chertoff*, 07-3455-WHA.

Zhang has not filed an opposition to the motion to dismiss, currently scheduled for hearing on July 31, 2007. Neither Zhang nor his new counsel, Alexandre Lebecki, have returned calls from Zhang's former counsel regarding permission to forward information, or a stipulation to dismiss the remaining plaintiffs. Sin Yen Ling Decl. ¶ 6. Additionally, this Court's Courtroom Deputy has made several attempts to contact Lebecki by phone, however, Lebecki has not responded to the calls.

Given that this Court's Standing Order states that "the failure of the opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute a consent to the granting of the motion," the Court may summarily grant the motion. However, in the interest of providing Zhang with one last chance to prevent his case from being dismissed, IT IS HEREBY ORDERED that the hearing on the motion to dismiss scheduled for July 31, 2007 is VACATED.

IT IS FURTHER ORDERED that:

(1) Plaintiff and/or Plaintiff's counsel of record shall appear in Courtroom 3 of the United States Courthouse, 1301 Clay Street, Oakland, California, on **July 31, 2007, at 1:00 P.M.**, to show cause why the above-captioned case should not be dismissed without prejudice for failure to prosecute.

(2) At least **five** days prior to the above hearing, Plaintiff or Plaintiff's counsel of record must file a Certificate of Counsel with the Clerk of the Court, to explain why the case should or should not be dismissed for failure to prosecute. The Certificate shall set forth the nature of the case, its present status, the reason it has not been brought to trial or otherwise terminated, any basis for opposition to dismissal by any party, and its expected course if not dismissed.

*2 (3) Please take notice that this Order requires *both* the specified court appearance *and* the filing of the Certificate of Counsel. Failure to fully comply with this order will be deemed sufficient grounds to dismiss the action.

IT IS SO ORDERED.

