

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 13 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RITA SUEI-TE CHIANG,

Plaintiff - Appellant,

v.

FEDERAL BUREAU OF
INVESTIGATION; UNITED STATES
DEPARTMENT OF JUSTICE; PETER D.
KEISLER,** Acting Attorney General;
ROBERT S. MUELLER, Director Federal
Bureau of Investigation,

Defendants - Appellees.

No. 06-55958

D.C. No. CV-05-03273-MMM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Argued and Submitted April 8, 2008
Pasadena, California

Before: HALL, T.G. NELSON, and SILVERMAN, Circuit Judges.

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

** Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzales, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

Rita Suei-Te Chiang appeals the district court's dismissal of her Title VII claims. The district court dismissed the claims because it lacked subject matter jurisdiction over the Federal Bureau of Investigation's decision to revoke Chiang's security clearance. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

We review the district court's dismissal for lack of subject matter jurisdiction de novo. *Dorfmont v. Brown*, 913 F.2d 1399, 1400-01 (9th Cir. 1990). Federal courts do not have the power to review an agency's decision to grant or revoke a security clearance. *See id.* at 1401. This lack of jurisdiction extends to Title VII claims involving security clearance determinations. *Brazil v. U.S. Dep't of Navy*, 66 F.3d 193, 196 (9th Cir. 1995). This lack of jurisdiction arises because when evaluating a Title VII claim the court must determine whether the defendant's proffered reasons for its actions were a pretext to mask discrimination; and, in order to make that determination, the federal courts would be required to review the merits of the security clearance decision. *Id.* at 196-97.

Because Chiang's Title VII claims would require the district court to review the merits of the FBI's decision to temporarily revoke her security clearance, the district court did not err when it denied her request for an evidentiary hearing and dismissed the claims for lack of subject matter jurisdiction.

AFFIRMED.