

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 25 2009

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

SARAH TRAN, on her behalf and on
behalf of TINH NGUYEN deceased;
BICH T. TRAN,

Plaintiffs - Appellants,

v.

CONDOLEEZZA RICE, in her official
capacity as Secretary of State; SETH D.
WINNICK, in his official capacity as
Consul General,

Defendants - Appellees.

No. 07-55725

D.C. No. CV-06-02697-H

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Argued and Submitted October 23, 2008
Pasadena, California

Before: PREGERSON and N.R. SMITH, Circuit Judges, and COLLINS**, District
Judge.

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

** The Honorable Raner C. Collins, United States District Judge for the
District of Arizona, sitting by designation.

Sarah and Bich Tran appeal the district court's dismissal of their case for lack of subject matter jurisdiction. Sarah and Bich Tran sought a writ of mandamus to compel the United States Consulate in Vietnam to make a final decision regarding Bich Tran's immigrant visa petition. We affirm the district court's dismissal.

We review de novo the district court's dismissal for lack of subject matter jurisdiction. *Mobil Oil Corp. v. City of Long Beach*, 772 F.2d 534, 538 (9th Cir. 1985). We find that the district court did not err in its dismissal of this case, because Bich Tran failed to exhaust her administrative remedies with the United States Consulate in Vietnam before filing her complaint with the district court. Thus, her claims were not ripe for district court review. Furthermore, now that the United States Consulate in Vietnam has made a final decision to return Bich Tran's visa petition to United States Citizenship and Immigration Services ("USCIS"), the doctrine of consular nonreviewability applies to its decision. *See Patel v. Reno*, 134 F.3d 929, 931-32 (9th Cir. 1998) (noting that the doctrine of consular nonreviewability applies to a consulate's decision to return a visa petition to USCIS).

Counsel for the government may wish to file with the clerk of our court biannual reports concerning the status of Bich Tran's immigrant visa petition before USCIS.

AFFIRMED.