

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAPENG XU,

Plaintiff,

v.

MICHAEL CHERTOFF, as Secretary of
the Department of Homeland Security;
EMILIO GONZALEZ, Director of U.S.
Citizen and Immigration Services; and
ROBERT S. MULLER, Director of the
Federal Bureau of Investigation,

Defendants.

ORDER

06-C-678-C

Plaintiff Dapeng Xu has filed a motion to dismiss this action seeking adjudication of his and his wife's application for adjustment of status. According to plaintiff, he has received the relief he was seeking. I construe plaintiff's motion as a notice of voluntary dismissal pursuant to Rule 41, Federal Rules of Civil Procedure.

Rule 41(a)(1) provides:

...an action may be dismissed by the plaintiff without order of the court (1) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment. . . .Unless otherwise stated in the notice of

dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

In this case, the defendants have not yet answered or moved for summary judgment. Therefore, plaintiff is free to dismiss his lawsuit voluntarily, without prejudice to his refiling his complaint at a later date.

ORDER

I accept plaintiff's notice of voluntary dismissal of this action. The clerk of court is requested to close this case.

Entered this 24th day of January, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge