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**United States District Court
Central District of California**

GOKHAN KAYA,
Plaintiff,

v.

Case No. 2:16-cv-08780-ODW(AJWx)

SUSAN CURDA; LEON RODRIGUEZ;
LORI SCIALABBA; JEH JOHNSON; and
LORETTA LYNCH,
Defendants.

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS [17]**

I. INTRODUCTION

On November 25, 2016, Plaintiff Gokhan Kaya filed a Petition for Review of the Denial of his Application for Naturalization. (ECF No. 1.) Kaya sought the district court's review after the California District Office of U.S. Citizenship and Immigration Services ("USCIS") denied his application for naturalization. (*See id.*) On February 13, 2017, Defendants filed a motion to dismiss for failure to state a claim on which relief can be granted.¹ (ECF No. 17.) For the reasons discussed below, the Court **GRANTS** the motion and dismisses the case.

II. FACTUAL BACKGROUND

¹ After carefully considering the papers filed in support of and in opposition to the Motion, this Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Kaya is a citizen of Turkey. (Petition ¶ 4.) On June 30, 2010, he married a
2 United States citizen, and he became a conditional resident of the United States on
3 March 7, 2011. (*Id.* at ¶¶ 4, 10.) He then received lawful permanent resident status on
4 April 28, 2013. (*Id.* at ¶ 16.) The next year, in September 2014, Kaya separated from
5 his wife and moved out of their shared apartment, and in October 2015, his wife filed
6 for divorce. (*Id.* at ¶ 17.) The dissolution of the marriage became final on January 13,
7 2017. (*See* Mot. 4–5; Opp’n 2.)²

8 Kaya submitted a Form N-400, Application for Naturalization on May 27, 2014,
9 a few months before he and his wife began experiencing marital difficulties.
10 (*See* Petition ¶ 17.) His application cited 8 U.S.C. § 1430(a) as the basis for his
11 eligibility for naturalization. (*See id.*; Ex. 7, ECF No. 1-7.) Section 1430(a) provides
12 an avenue for expedited naturalization for applicants whose spouse is a citizen of the
13 United States: applicants in such a position can be naturalized after three years of
14 lawful permanent residence. Without a basis for expedited naturalization such as
15 1430(a), the default residency requirement prior to naturalization is five years of
16 lawful permanent resident status. *See* 8 U.S.C. § 1427(a).

17 III. LEGAL STANDARD

18 An applicant for naturalization bears the burden of showing eligibility for
19 citizenship. *Berenyi v. Dist. Dir., Immigration and Naturalization Serv.*, 385 U.S. 630,
20 636–637 (1967). “[D]oubts [about eligibility] should be resolved in favor of the
21 United States and against the claimant.” *U.S. v. Macintosh*, 283 U.S. 605, 626 (1931).

22 On a motion to dismiss, a court may dismiss a complaint under Rule 12(b)(6)
23 for lack of a cognizable legal theory or insufficient facts pleaded to support an
24 otherwise cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696,
25 699 (9th Cir. 1990). To survive a dismissal motion, a complaint need only satisfy the
26 minimal notice pleading requirements of Rule 8(a)(2)—a short and plain statement of

27 ² Kaya’s Petition alleges that his divorce is not yet final, but in the parties’ papers in support of and
28 in opposition to the motion to dismiss, they do not disagree that Kaya’s divorce was finalized on
January 13, 2017, several weeks after Kaya filed his Petition. (Mot. 4–5; Opp’n 2.)

1 the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual
2 “allegations must be enough to raise a right to relief above the speculative level.” *Bell*
3 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). That is, the complaint must
4 “contain sufficient factual matter, accepted as true, to state a claim to relief that is
5 plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

6 The determination of whether a complaint satisfies the plausibility standard is a
7 “context-specific task that requires the reviewing court to draw on its judicial
8 experience and common sense.” *Id.* at 679. A court is generally limited to the
9 pleadings and must construe all “factual allegations set forth in the complaint . . . as
10 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of L.A.*, 250 F.3d
11 668, 688 (9th Cir. 2001). But a court need not blindly accept conclusory allegations,
12 unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden*
13 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

14 Generally, a court should freely give leave to amend a complaint that has been
15 dismissed, even if not requested by the party. *See* Fed. R. Civ. P. 15(a); *Lopez v.*
16 *Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). However, a court may deny
17 leave to amend when it “determines that the allegation of other facts consistent with
18 the challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib.*
19 *Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

20 IV. DISCUSSION

21 Kaya’s Petition asks for naturalization on two bases: either § 1430(a), given that
22 he was married to a United States citizen at the time of submitting his application for
23 naturalization, or § 1427, because he now satisfies the five-year residency requirement
24 as a lawful permanent resident. (*See generally* Petition.) Defendants argue that the
25 allegations Kaya pleads in his Petition do not give rise to a claim for naturalization
26 under either statute. (*See* Mot.) The Court agrees with Defendants: even after
27 viewing all of the facts in the light most favorable to Kaya, his claim is not viable and
28 cannot survive Defendants’ motion to dismiss.

1 **A. Section 1430(a)**

2 Section 1430(a) provides for naturalization where the applicant meets all other
3 citizenship requirements other than the five-year residency requirement under § 1427,
4 and (1) is married to a citizen of the United States, (2) has been a permanent lawful
5 resident for at least three years, and (3) has been living in marital union with the
6 citizen spouse for the three years immediately preceding the date of application. The
7 first requirement—that the applicant *be* married to a United States citizen, not
8 formerly married—precludes Kaya from naturalization under this statute. Kaya is
9 divorced from his citizen spouse, and as numerous cases have held, an applicant must
10 remain married up until completion of the naturalization process to be eligible under §
11 1430(a). *See, e.g., Alenazi v. USCIS*, No. 09-cv-2053, 2010 WL 3988744, at *2–3
12 (S.D. Cal. Oct. 12, 2010); *Ali v. Smith*, 39 F. Supp. 2d 1254, 1256 (W.D. Wash. 1999).
13 Therefore, since Kaya admits that he is now divorced, his Petition fails to state a claim
14 under § 1430(a) on which relief can be granted.

15 **B. Section 1427**

16 Section 1427 allows naturalization where a lawful permanent resident has been
17 a resident of the United States for at least five years. 8 U.S.C. § 1427(a). Kaya argues
18 that because he has now been a lawful resident for more than five years, he is eligible
19 for naturalization under § 1427. Defendants argue in their motion to dismiss that this
20 Court has no power to naturalize under that statute because Kaya was not eligible at
21 the time he filed his N-400. (Mot. 9–10.) Again, Defendants are correct. The Code
22 of Federal Regulations establishes that in applying for any benefit (such as
23 naturalization), an applicant or petitioner “must establish that he or she is eligible for
24 the requested benefit *at the time of filing the benefit request* and must continue to be
25 eligible through adjudication.” 8 C.F.R. § 103.2(b)(1) (emphasis added). Based on
26 the facts Kaya pleads in his Petition, he became conditional resident on March 7,
27 2011, and a lawful permanent resident on April 28, 2013. (Petition ¶ 16.) He applied
28 for naturalization on May 27, 2014. (*Id.* at ¶ 17.) The difference between the date he

1 became a conditional resident and when he applied for naturalization is just over three
2 years—sufficient for naturalization under § 1430(a), which Kaya is no longer eligible
3 for, but almost two years short of the minimum residency under § 1427. Therefore,
4 Defendants are correct that Kaya cannot be granted naturalization under § 1427. Kaya
5 must submit a new application to USCIS, which has the sole power to adjudicate the
6 application in the first instance.

7 **V. CONCLUSION**

8 For the reasons discussed above, Defendants’ Motion is **GRANTED**. (ECF
9 No. 17.) Because the Court finds that no additional facts consistent with Kaya’s
10 Petition could cure its failure to state a claim on which relief can be granted, the
11 dismissal is **without leave to amend**. The Clerk of Court shall close the case.

12
13 **IT IS SO ORDERED.**

14 April 7, 2017

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17 **OTIS D. WRIGHT, II**
18 **UNITED STATES DISTRICT JUDGE**