

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SONG WENFO,  
Plaintiff,  
v.  
BARACK OBAMA, President of the  
United States,  
Defendant.

No. 2:14-cv-1322 TLN DAD PS

ORDER

Petitioner Song Wenfo is proceeding in this action pro se. Accordingly, the matter has been referred to the undersigned pursuant to Local Rule 302(c)(21).

On October 17, 2014, the undersigned issued findings and recommendations recommending that this action be dismissed without prejudice for plaintiff's failure to comply with Rule 4(m) of the Federal Rules of Civil Procedure. (Dkt. No. 13.) Those findings and recommendations were adopted by the assigned District Judge on December 16, 2014, and this case was closed. (Dkt. No. 16.) On January 5, 2015, plaintiff filed a notice of appeal and a motion to proceed in forma pauperis on appeal. (Dkt. No. 19.)

A party to a district-court action seeking to proceed in forma pauperis on an appeal must file a motion in the District Court, appending an affidavit that (a) shows the party's inability to pay or to give security for fees and costs in the detail prescribed by Form 4 in the appendix of the

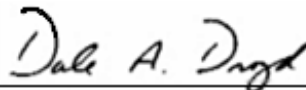
1 Appellate Rules of Civil Procedure; (b) claims entitlement to redress; and (c) states the issues that  
2 the party intends to present on appeal. Fed. R. App. P. 24(a)(1). Here, plaintiff's affidavit states  
3 that he has over \$3,500 in a savings account and \$1,173 in a checking account. (Dkt. No. 19.) In  
4 this regard, plaintiff's filing does not establish his inability to pay.

5 Moreover, pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken in forma  
6 pauperis if the trial court certifies in writing that it is not taken in good faith." The good faith  
7 standard is an objective one. Coppedge v. United States, 369 U.S. 438, 445 (1962). A plaintiff  
8 satisfies the "good faith" requirement if he or she seeks review of any issue that is "not  
9 frivolous." Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir. 1977) (quoting Coppedge, 369 U.S. at  
10 445).

11 Here, plaintiff's complaint was dismissed without prejudice due to plaintiff's failure to  
12 comply with Rule 4(m) after plaintiff stated to the court that he could not comply with Rule 4(m)  
13 even if give more time. In this regard, plaintiff has failed to satisfy the good faith requirement.

14 Accordingly, IT IS ORDERED that plaintiff's January 19, 2015 motion to proceed in  
15 forma pauperis on appeal (Dkt. No. 19) is denied.

16 Dated: February 10, 2015

17 

18 \_\_\_\_\_  
19 DALE A. DROZD  
20 UNITED STATES MAGISTRATE JUDGE

21 DAD:6  
22 Ddad1\orders.pro se\wenfo1322.ifp.ord.docx  
23  
24  
25  
26  
27  
28