

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SALVADOR ROBLES LOPEZ,

No. C 09-4837 MHP

Plaintiff,

MEMORANDUM & ORDER

v.

Re: Defendant's Motion to Dismiss

ERIC H. HOLDER JR.,

Defendant.

In October 2009, petitioner Salvador Robles Lopez filed a petition for de novo review of the Attorney General's denial of petitioner's naturalization application. Now before the court is the Attorney General's motion to dismiss the petition for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).

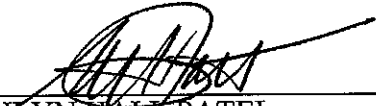
Petitioner entered the United States in approximately October 1984. Docket No. 8, Exh. 1 (Notice of Removal Proceedings) at 1. He was convicted of possession for sale of a controlled substance in violation of California law. *Id.* After his conviction, petitioner applied for naturalization. His application for naturalization was denied by the Attorney General on the grounds that, despite reformation of character, the prior conviction created a statutory bar to good moral character and naturalization. *See* Docket No. 1, Exh. 1 (N-336 Review Decision) at 2. Based on this past conviction, removal proceedings against petitioner are pending. Petitioner now seeks judicial review of the decision denying his naturalization application and an order mandating that the Attorney General grant naturalization. The Attorney General argues that this court is statutorily

1 prohibited from providing relief to petitioner pursuant to 8 U.S.C. section 1429 (“[N]o application
2 for naturalization shall be considered by the Attorney General if there is pending against the
3 applicant a removal proceeding pursuant to a warrant of arrest issued under the provisions of this
4 chapter or any other Act”).

5 Petitioner has conceded, *see* Docket No. 10 (Opp.) at 1, that the legal question at issue
6 on the present motion is the same as the one recently decided by this court in *Castaneda v. Holder*,
7 No. 09-3177, 2009 WL 4282810, at *3 (N.D. Cal. Nov. 25, 2009) (Patel, J.). Although the district
8 court has jurisdiction to review a naturalization decision by the Attorney General, the district court
9 cannot, while removal proceedings are pending, provide effective relief to an applicant denied
10 naturalization. *See id.* at 3-6. Accordingly, defendant’s motion to dismiss the complaint is
11 GRANTED without prejudice to renewal by petitioner should such renewal be warranted by law and
12 desired by petitioner following the conclusion of his removal proceedings. The instant action is
13 DISMISSED.

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15 IT IS SO ORDERED.

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17 Dated: 2/16/10

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19 MARILYN HALE PATEL
20 United States District Court Judge
21 Northern District of California
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