

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LYDIA EDGMON,

Plaintiff,

v.

JOHN KERRY, in his official capacity as
Secretary of State for the United States of
America,

Defendant.

CASE NO. C16-0596-JCC

ORDER GRANTING MOTION TO
DISMISS

This matter comes before the Court on Defendant Secretary of State Kerry’s motion to dismiss for failure to state a claim (Dkt. No. 11). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

I. BACKGROUND

This case arises out of the United States Department of State’s denial of Plaintiff Edgmon’s passport renewal application because she voluntarily renounced her citizenship at the U.S. Embassy in Sweden in 1979. (Dkt. No. 1 at 1, 3.) Edgmon filed a complaint against Kerry, alleging that the Department of State took unlawful agency action under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, and denied her the rights and privileges of a United States National under 8 U.S.C. § 1503. (*Id.* at 3–4.) Kerry filed a motion to dismiss under

1 Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). (Dkt. No. 11 at 2–3.) Edgmon did not
2 file a response. Kerry first argues that this Court does not have jurisdiction over Edgmon’s
3 request for relief under the APA because the statutory provision is not available when another
4 legally adequate remedy is available to address her claim. (*Id.* at 4.) Kerry next argues that
5 Edgmon fails to state a claim for which relief may be granted because Edgmon’s sole,
6 conclusory statement that her renunciation of citizenship was under duress is insufficient to show
7 she did not voluntarily renounce her United States citizenship. (*Id.* at 6–7.) The Court agrees that
8 Edgmon has failed to state a claim for which relief may be granted and therefore declines to
9 address the APA issue.

10 **II. DISCUSSION**

11 **A. Standard of Review**

12 1. Local Civil Rule 7(b)(2)

13 The Court notes that Edgmon did not file a response to Kerry’s motion to dismiss. Under
14 Local Civil Rule 7(b)(2), “if a party fails to file papers in opposition to a motion, such failure
15 may be considered by the court as an admission that the motion has merit.” Accordingly, the
16 Court takes Edgmon’s failure to file a response to Kerry’s motion to dismiss as an admission that
17 the motion has merit. W.D. Wash. Local Civ. R. 7(b)(2).

18 2. Federal Rule of Civil Procedure 12(b)(6)

19 A defendant may move for dismissal when a plaintiff “fails to state a claim upon which
20 relief can be granted.” Fed. R. Civ. P. 12(b)(6). To grant a motion to dismiss, the court must be
21 able to conclude that the moving party is entitled to judgment as a matter of law, even after
22 accepting all factual allegations in the complaint as true and construing them in the light most
23 favorable to the non-moving party. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).
24 However, a court need not “necessarily assume the truth of legal conclusions merely because
25 they are cast in the form of factual allegations.” *W. Mining Council v. Watt*, 643 F.2d 618, 624
26 (9th Cir. 1981).

1 **B. Analysis**

2 If a person is denied a right or privilege entitled to a United States national because it is
3 alleged that she is not a national of the United States, she may seek declaratory judgment that she
4 is in fact a national. 8 U.S.C. § 1503. The Department of State, which has the authority to issue
5 passports, may only issue them to United States nationals. 22 U.S.C. §§ 211a, 212; 22 CFR
6 51.2(a). An individual who has renounced her citizenship is not entitled to a United States
7 passport. 22 U.S.C. § 211a, 212. An individual loses her United States nationality by “making a
8 formal renunciation of nationality before a diplomatic or consular officer of the United States in
9 a foreign state, in such form as may be prescribed by the Secretary of State.” 8 U.S.C.
10 § 1481(a)(5). Any such act of renunciation creates a rebuttable presumption of voluntariness. 8
11 U.S.C. § 1481(b). The burden is on the applicant to show that she is a national by a
12 preponderance of the evidence. 22 CFR 51.40.

13 Kerry argues that under 8 U.S.C. §1503, Edgmon fails to plead a claim upon which relief
14 may be granted because Edgmon revoked her citizenship in 1979. (Dkt. No. 11 at 5.) In her
15 complaint, Edgmon alleges that her revocation of citizenship was not voluntary because it was
16 done under duress. (Dkt. No. 1 at 3.) The issue is whether Edgmon has pleaded sufficient facts to
17 show her renunciation was not voluntary.

18 Edgmon admits that she renounced her United States nationality. (Dkt. No. 1 at 3.) She
19 did so formally and in front of a consular officer through the process and forms prescribed by the
20 Secretary of State. (Dkt. Nos. 11-2–11-4.)¹ Edgmon’s only argument that her renunciation was

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22 ¹ Kerry included documents in the possession of the Department of State in his motion to
23 dismiss. (*See* Dkt. Nos. 11-1, “Oath of Renunciation of Nationality of the United States”; 11-2,
24 “Certificate of Loss of Nationality”; 11-3, “Statement of Understanding”; and 11-4,
25 “Memorandum from the Embassy in Stockholm to the Department of State.”) Because Edgmon
26 references her renunciation of citizenship in the complaint, (Dkt. No. 1 at 3), and because the
basis of the complaint is that Kerry denied her passport renewal because she renounced her
citizenship, (*Id.*), these documents are incorporated by reference. The Court may consider these
documents without converting Kerry’s motion into a motion for summary judgment. *Tellabs,*
Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007) (“[C]ourts must consider the

1 involuntary rests on her allegation that she signed the “oath of renunciation under duress.” (Dkt.
2 No. 1 at 3.) She alleges no factual basis which would support a finding of duress or a showing of
3 involuntariness. On the contrary, the paperwork she filled out in renouncing her citizenship
4 strongly evidences voluntariness. (*See, e.g.*, Dkt. No. 11-3, “Statement of Understanding.”) A
5 complaint does not “suffice if it tenders ‘naked assertion[s]’ devoid of “further factual
6 enhancement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atlantic Corp. v.*
7 *Twombly*, 550 U.S. 544, 557 (2007)). Edgmon has pleaded insufficient facts to claim she did
8 not renounce her citizenship voluntarily, and thus cannot maintain an action premised on the
9 allegation that her passport renewal was improperly denied. Accordingly, she has failed to state a
10 claim for which relief may be granted.

11 **III. CONCLUSION**

12 For the foregoing reasons, Defendant Secretary of State Kerry’s motion to dismiss (Dkt.
13 No. 11) is GRANTED. The Court ORDERS that Plaintiff’s claims are dismissed without
14 prejudice.

15 DATED this 14th day of October 2016.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

25 complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule
26 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by
reference”).