UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	No: 2:11-CV-01267-SVW (JCGx)	Date	September 28, 2011
Title	Handi Lui, et al. V. Eric H. Holder, U.S. Attorney General, et al.		

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Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE	
Paul M. Cruz	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: IN CHAMBERS ORDER re DEFENDANTS' PARTIAL MOTION TO DISMISS; INTERVENOR'S MOTION TO DISMISS [18] [19]

I. INTRODUCTION

Plaintiffs Hamdi Lui ("Lui") and Michael Ernest Roberts,("Roberts") (collectively "Plaintiffs") bring this suit challenging Defendants' denial of Roberts' Form I-130 Petition (the "Petition"). Roberts filed the Petition on behalf of Lui, seeking to classify Lui as an "immediate relative" in order for Lui to gain lawful permanent resident status in the United States. See 8 C.F.R. § 204.1(a). Plaintiffs challenge the denial of the Petition on two grounds. First, Plaintiffs claim that the denial of the Petition violates the Immigration and Nationaity Act's ("INA") anti-discrimination provision based on alleged "sex" discrimination. (Compl., ¶¶ 8, 32, 35). Second, Plaintiffs challenge the constitutionality of the denial of the Petition as a result of the United States Citizenship and Immigration Services' ("USCIS") interpretation of the Defense of Marriage Act ("DOMA") Pub. L. No. 104-199, 110 Stat. 2419 (1996), codified at 1 U.S.C. § 7.

On June 17, 2011 Defendants filed their Partial Motion to Dismiss, which focuses solely on the INA "sex" discrimination claim. On the same day, Intervenor the Bipartisan Legal Advisory Group for the U.S. House of Representatives ("Intervernor") filed its Motion to Dismiss, which focuses solely on Plaintiffs' constitutional challenge to Section 3 of DOMA. Plaintiffs and Defendants filed separate Oppositions to Intervenor's Motion to Dismiss.[1]

[1]As Intervenor notes, in February of this year, the Department of Justice decided to forego defending the constitutionality of DOMA. Accordingly, Defendants filed an Opposition to Intervenor's Motion to Dismiss in order to argue that Section 3 of DOMA is unconstitutional.

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II. BACKGROUND FACTS

Plaintiff Lui is a native and citizen of Indonesia. Plaintiff Roberts is a U.S. Citizen. Plaintiffs, same-sex couple, were legally married under the laws of Massachusetts on April 9, 2009. On the same day, Plaintiff Roberts filed the Petition on behalf of Plaintiff Lui with the USCIS California Service Center. (Id. ¶ 28). On August 28, 2009, Plaintiffs' Petition was denied. On January 20, 2011, the BIA dismissed Plaintiffs' appeal of the I-130 Petition Denial.

Plaintiffs claim that Defendants' refusal to grant the Petition on the basis of Plaintiffs' same-sex marriage constitutes "sex" discrimination in violation of the INA's anti-discrimination provision, 8 U.S.C. § 1152(a)(1)(A). (Compl. ¶ 8). Plaintiffs further contend that Defendants' application of DOMA's definition of marriage in making the determination that a same-sex spouse is not an "immediate relative" for I-130 petition purposes violated their constitutional due process and equal protection rights. (Id. ¶¶ 5, 18).

III. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the claims stated in the complaint. See Fed. R. Civ. Proc. 12(b)(6). To survive a motion to dismiss, the plaintiff's complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. __, 129 S.Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. A complaint that offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Id.; see also Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009) (Citing Iqbal, 129 S. Ct. at 1951).

In reviewing a Rule 12(b)(6) motion, the Court must accept all allegations of material fact as true and construe the allegations in the light most favorable to the nonmoving party. Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002). While a court does not need to accept a pleader's legal conclusions as true, the court reviews the complaint, accepting all factual allegations as true, and drawing all reasonable inferences in favor of the nonmoving party. Knievel v. ESPN, 393 F.3d 1068, 1072 (9th Cir. 2005).

The court may grant a plaintiff leave to amend a deficient claim "when justice so requires." Fed. R. Civ. P. 15(a)(2). "Five factors are frequently used to assess the propriety of a motion for leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment; and (5) whether plaintiff has previously amended his Complaint." Allen v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir. 1990) (Citing Ascon Properties, Inc. v. Mobil Oil Co., 866

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F.2d 1149, 1160 (9th Cir. 1989)).

Where a motion to dismiss is granted, "leave to amend should be granted 'unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.'" DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992) (quoting Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)). In other words, where leave to amend would be futile, the Court may deny leave to amend. See Desoto, 957 F.2d at 658; Schreiber, 806 F.2d at 1401.

IV. DISCUSSION

The gravamen of Plaintiffs' complaint is that Roberts' Petition was improperly rejected because Lui, as Roberts' same-sex spouse, qualifies as an immediate relative under the INA. Defendants maintain that the USCIS and the BIA do not engage in impermissible sex discrimination under the INA when they refuse to grant an I-130 petition under these circumstances. The Court finds that this proposition is well settled under Adams v. Howerton, 673 F.2d 1036 (9th Cir. 1982), which also involved an I-130 immediate relative petition filed by a party to a same-sex marriage. See Adams, 673 F.2d at 1036 (holding that the agency's interpretation of marriage in the INA, 8. U.S.C. § 1151(b), as excluding same-sex couples did not violate plaintiffs' due process or equal protection rights under rational basis review).[2] Furthermore, Plaintiffs have failed to assert any facts to suggest the Defendants discriminated against them on the basis of their sex, as opposed to their sexual orientation. Accordingly, the Court GRANTS Defendants' Partial Motion to Dismiss without prejudice.

As noted above, USCIS relied on the definitions of marriage and spouse contained in Section 3 of DOMA in denying Plaintiffs' Petition. In this instance, Defendants walk a fine line, on the one hand

[2]As Intervenor notes, eleven federal circuits have held that homosexuals are not a suspect class. See Cook v. Gates, 528 F.3d 42, 61-62 (1st Cir. 2008), *cert. denied*, Pietrangelo v. Gates, 129 S. Ct. 2763 (2009); Citizens for Equal Prot., v. Bruning, 455 F.3d 859, 866 (8th Cir. 2006); Lofton v. Sec. of Dept. of Children & Fam. Servs., 358 F.3d 804, 818 & n.16 (11th Cir. 2004), *cert. denied*, 543 U.S. 1081 (2005); Equal. Found. of Greater Cincinnati, Inc. v. City of Cincinnati, 128 F.3d 289 (6th Cir. 1997); Holmes v. Cal. Army Nat'l Guard, 124 F.3d 1126 (9th Cir. 1997); Richenberg v. Perry, 97 F.3d 256 (7th Cir. 1996); Thomasson v. Perry, 80 F.3d 915 (4th Cir. 1996); Steffan v. Perry, 41 F.3d 677 (D.C. Cir. 1994); Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir. 1989); Woodward v. United States, 871 F.2d 1068 (Fed. Cir. 1989); Town of Ball v. Rapides Parish Police Jury, 746 F.2d 1049 (5th Cir. 1984); Rich v. Sec'y of the Army, 735 F.2d 1220 (10th Cir. 1984); see also Able v. United States, 155 F.3d 628, 632 (2d Cir. 1998) (not applying heightened scrutiny).

arguing in their Partial Motion to Dismiss that they did not violate the INA by discriminating against Plaintiffs on the basis of their same-sex marriage while simultaneously arguing that Section 3 of DOMA, which excludes same-sex couples from the definitions of marriage and spouse for purposes of federal law, violates equal protection.

To the extent that Plaintiffs Challenge Section 3 of DOMA on equal protection grounds, that issue has been decided by Adams.[3] 673 F.2d at 1041.[4] In Adams, the Ninth Circuit held that "Congress's decision to confer spouse status . . . only upon the parties to heterosexual marriages has a rational basis and therefore comports with the due process clause and its equal protection requirements."[5] Id. at 1042. The fact that DOMA was enacted years after the Ninth Circuit's decision in Adams is not persuasive given that marriage as defined in Section 3 of DOMA is consistent with Adams. While Plaintiffs and Defendants point out the alleged deficiencies in the reasoning in Adams, this Court is not in a position to decline to follow Adams or critique its reasoning simply because Plaintiffs and Defendants believe that Adams is poorly reasoned.[6] Furthermore, as Intervenor

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[3]In addition to Adams, Intervenor argues that Baker v. Nelson, 409 U.S. 810 (1972) controls. In Baker, plaintiffs, a same-sex couple, appealed a decision of the Minnesota Supreme Court affirming rejecting a constitutional challenge to the rejection of their application for a Minnesota marriage license. Baker v. Nelson, 191 N.W.2d 185 (Minn. 1971), *aff'd*, 409 U.S. 810 (1972). The Supreme Court unanimously dismissed plaintiffs' appeal "for want of a substantial federal question." The Court need not determine the effect of a summary disposition of the Supreme Court because we are bound to follow the Ninth Circuit's decision in Adams.

[4]See also, High-Tech Gays v. Def. Indus. Sec. Clearance Ofc., 895 F.2d 563, 571 (9th Cir. 1990) (rejecting the argument that "homosexuality should be added to the list of suspect or quasi-suspect classifications requiring strict or heightened scrutiny").

[5]The Court in Adams noted that Congress "has almost plenary power to admit or exclude aliens," and that, as a result, "the decisions of Congress [in the immigration context] are subject only to limited judicial review." Adams, 673 F.2d at 1041. While the Court noted that, pursuant to its plenary power in the immigration context, Congress "may enact statues which, if applied to citizens, would be unconstitutional," the Court ultimately upheld the exclusion of same-sex couples from the definition of marriage under the INA under rational basis review, as opposed to "some lesser standard of review." Id. at 1042.

[6]The Court is aware of a similar case recently heard by District Judge R.Gary Klausner. See Torres-Barragan v. Holder, No. 2:09-cv-08564-RGK-MLG (C.D. Cal. April 30, 2010) (ECF No. 24) *appeal docketed*, No. 10-55768 (9th Cir.). The only substantive difference between Torres-Barragan and the instant action is that Torres-Barragan arose prior to the Department of Justice's change in

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prerogative to overturn Ninth Circuit precedent rests not with this District Court, but with the *en banc* Ninth Circuit and the Supreme Court. See Twentieth Century Fox Film Corp. v. Entm't Distrib., 429 F.3d 869, 877 (9th Cir. 2005) (citing Palmer v. Sanderson, 9 F.3d 1433, 1437 n.5 (9th Cir. 1993) ("As a general rule, a panel not sitting en banc may not overturn circuit precedent."). The Court feels bound by Ninth Circuit precedent, and believes that those precedents are sufficiently clear.[7]

V. CONCLUSION

For the reasons set forth in this Order, Defendants' Partial Motion to Dismiss and Intervenor's Motion to Dismiss are hereby GRANTED without prejudice.

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[7]The Court is aware of the District of Massachusetts' decision in Gill v. OPM, 699 F. Supp. 2d 374 (D. Mass. 2010) *appeal docketed*, No. 10-2204 (1st Cir.), in which the court held that Section 3 of DOMA violates equal protection under rational basis review. The Court notes that the plaintiffs in Gill were spouses of federal employees who brought suit on the basis of denial of certain federal marriage-based benefits, thus the context of that case was somewhat different from the present case, which arose in the context of immigration law. More importantly, the court's decision in Gill does not affect this Court's obligation to follow binding Ninth Circuit precedent.

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