

3/8/2022 - CORRECTED
to redact date of birth

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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 ILAI KANUTU KOONWAIYOU,

11 Plaintiff,

12 v.

13 ANTONY J BLINKEN,

14 Defendant.

CASE NO. 3:21-cv-05474-DGE

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS

15
16 **I. INTRODUCTION**

17 Plaintiff asks the Court for an order declaring him a national of the United States
18 (“U.S.”). He claims U.S. national status derivative of his mother pursuant to 8 U.S.C. § 1408(4)
19 as amended in 1986 (“Section 1408(4)”). Plaintiff asserts his mother became a U.S. national at
20 birth as a matter of law on the date she was conferred U.S. national status pursuant to Section
21 1408(4). However, the 1986 amendment to Section 1408(4) included proviso language limiting
22 Section 1408(4)’s application to persons, such as Plaintiff’s mother, born before the amendment.
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1 For the reasons stated herein, the Court GRANTS Defendants' motion to dismiss,
2 concluding the 1986 amendment's proviso language limits Plaintiff's mother's U.S. national
3 status to the date it was conferred and that such status is not retroactive to Plaintiff's mother's
4 date of birth.

5 II. BACKGROUND

6 A. Plaintiff and Plaintiff's Mother.

7 Plaintiff was born in Western Samoa on [REDACTED] 1967. (Dkt. No. 6 at 1.) He
8 asserts he is a U.S. national pursuant to Section 1408(4) because he alleges his mother was a
9 U.S. national at the time of his birth. (*Id.* at 6-7.)

10 Plaintiff's mother applied for and was conferred U.S. national status pursuant to Section
11 1408(4) after it was amended in 1986. (*Id.* at 6.)¹ It was because of said amendment that
12 Plaintiff's mother qualified for national status. (*Id.*)

13 B. Statutory Language at Issue.

14 The motion to dismiss turns on the interpretation of Section 1408(4) as amended in 1986
15 by Sections 15(a) and 15(b) of Public Law 99-396, 100 Stat 837 (1986). Section 15(a) identifies
16 the amendment and Section 15(b) contains language applicable to the amendment. Only the
17 language of Section 15(a) was codified at Section 1408(4). Pursuant to the 1986 amendment, 8
18 U.S.C. § 1408 reads as follows:

19 Unless otherwise provided in section 1401 of this title, the following shall be
20 nationals, but not citizens, of the United States at birth:

- 21 (1) A person born in an outlying possession of the United States on or after the
22 date of formal acquisition of such possession;

23 _____
24 ¹ Plaintiff did not identify the date his mother's national status was conferred, only that it
occurred after the 1986 amendment.

1 (2) A person born outside of the United States and its outlying possessions of
2 parents both of whom are nationals, but not citizens, of the United States,
3 and have had a residence in the United States, or one of its outlying
4 possessions prior to the birth of such person;

5 (3) A person of unknown parentage found in an outlying possession of the
6 United States while under the age of five years, until shown, prior to his
7 attaining the age of twenty-one year, not to have been born in such outlying
8 possession; and

9 (4) A person born outside of the United States and its outlying possessions of
10 parents one of whom is an alien, and the other a national, but not a citizen,
11 of the United States . . . [.]²

12 With regard to subsection 1408(4) above, Section 15(b) of Public Law 99-396 states:

13

14 [§ 1408(4)] shall apply to persons born before, on, or after the date of the enactment
15 of this Act. In the case of a person born before the date of the enactment of this
16 Act-

17 (1) the status of a national of the United States shall not be considered to be
18 conferred upon the person until the date the person establishes to the
19 satisfaction of the Secretary of State that the person meets the requirements
20 of section [(4)]; and

21 (2) the person shall not be eligible to vote in any general election in American
22 Samoa earlier than January 1, 1987.

23 III. STANDARD OF REVIEW

24 A complaint must contain a “short and plain statement of the claim showing that the
pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A motion to dismiss under Rule 12(b)(6)³
of the Federal Rules of Civil Procedure can be granted only if the complaint, with all factual

² The remainder of subsection (4) identifies physical presence requirements. For purposes of the present motion, the physical presence requirements are not at issue.

³ The Defendant’s motion was filed under both Rule 12(b)(1) and Rule 12(b)(6). However, the Rule 12(b)(1) argument was specifically directed at Plaintiff’s Administrative Procedure Act (“APA”) claim. (Dkt. No. 12-1 at 5.) Notwithstanding, Defendants acknowledged the Court’s jurisdiction pursuant to 8 U.S.C. § 1503(a). (*Id.*) In response, Plaintiff agreed to withdraw his APA claim and, therefore, said claim no longer is at issue. (Dkt. No. 14 at 4 n.1.)

1 allegations accepted as true, fails to “raise a right to relief above the speculative level.” *Bell Atl.*
2 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Mere conclusory statements in a complaint and
3 “formulaic recitation[s] of the elements of a cause of action” are not sufficient. *Id.* “Dismissal
4 can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged
5 under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
6 1988) (citation omitted).

7 When ruling on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the
8 Court accepts all facts alleged in the complaint as true and makes all inferences in the light most
9 favorable to the non-moving party. *Baker v. Riverside Cty. Office of Educ.*, 584 F.3d 821, 824
10 (9th Cir. 2009). Absent facial plausibility, a plaintiff’s claims must be dismissed. *Bell Atl.*
11 *Corp.*, 550 U.S. at 570.

12 IV. DISCUSSION

13 “Statutory interpretation begins with the language of the statute. When the plain meaning
14 of a statutory provision is unambiguous, that meaning is controlling.” *Levi Strauss & Co. v.*
15 *Abercrombie & Fitch Trading Co.*, 633 F.3d 1158, 1171 (9th Cir. 2011) (citations omitted).
16 Courts must presume that Congress “says in a statute what it means and means in a statute what
17 it says there.” *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992). This means,
18 “[u]nless otherwise defined, statutory terms are generally interpreted in accordance with their
19 ordinary meaning.” *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006). Interpretation also
20 “depends upon reading the whole statutory text, considering the purpose and context of the
21 statute, and consulting any precedents or authorities that inform the analysis.” *Dolan v. Postal*
22 *Serv.*, 546 U.S. 481, 486 (2006). Moreover, “We must ‘interpret [the] statut[e] as a whole,
23 giving effect to each word and making every effort not to interpret a provision in a manner that
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1 renders other provisions of the same statute inconsistent, meaningless or superfluous.”

2 *California v. Azar*, 911 F.3d 558, 569 (9th Cir. 2018) (quoting *United States v. Thomsen*, 830
3 F.3d 1049, 1057 (9th Cir. 2016).

4 **A. The Plain Language of Section 15(b) Identifies Method For Obtaining U.S.
5 National Status For Persons Born Before Enactment of The 1986 Amendment.**

6 Section 15(b) of Public Law 99-396 is “a binding provision of positive law.”

7 *Koonwaiyou v. Barr*, 830 Fed. Appx. 566, 567 (9th Cir. 2020). The first sentence of Section
8 15(b) states that Section 1408(4) applies “to persons born before, on, or after the date of
9 enactment.” However, the second sentence of Section 15(b) limits the extent to which Section
10 1408(4) applies to persons born before the date of enactment. It states, “[i]n the case of a person
11 born before the date of the enactment of this Act-(1) the status of national of the United States
12 shall not be considered to be conferred upon the person until the date the person establishes to
13 the satisfaction of the Secretary of State” that they meet the requirements of Section 1408(4).

14 Contrary to Plaintiff’s contention, the second sentence of Section 15(b) is not a
15 “procedural requirement” for persons born before the 1986 amendment “to obtain confirmation
16 of their U.S. nationality from the Secretary of State.” (*See* Dkt. No. 14 at 5.) It also is not a
17 “mechanism to verify nationality claims” (Dkt. No. 21 at 1) or a “verification process for some
18 U.S. nationals.” (*Id.* at 2.) While the legislative history cited by Plaintiff identifies the purpose
19 behind the amendment, i.e. “to enable these residents of American Samoa to take their place with
20 other members of their community,” the amendment provided a *grant* of U.S. nationality to
21 certain individuals who had been unable to avail themselves of Section 1408(4) before the
22 amendment. *See* 132 Cong. Rec. 18619 (1986) (“Several hundred long-term residents of
23 American Samoa would be granted U.S. nationality by this section.”).

1 Thus, Section 15(b) imposes a statutory requirement for persons born before the date of
2 enactment “in which approval by the Secretary of State is plainly stated as a prerequisite for
3 *obtaining* U.S. nationality rather than an optional mechanism for clarifying one’s status”.
4 *Koonwaiyou*, 830 Fed. Appx. at 567 (emphasis added). Accordingly, Section 15(b), and
5 specifically the language therein applicable to persons born before the amendment, identifies the
6 method for obtaining rather than confirming or verifying U.S. nationality status.

7 **B. Meaning of “Shall Not Be Considered To Be Conferred Upon The Person Until**
8 **the Date The Person Establishes To The Satisfaction Of The Secretary of State”**
9 **They Meet Requirements of Section 1408(4).**

10 1. “Shall Not Be Considered To Be” Means “Is Not”.

11 The language “shall not be considered to be” as used in Section 15(b)(1) ordinarily means
12 that whatever is identified preceding such language is not that which is identified after such
13 language. This conclusion is supported by other sections of the Immigration and Nationality Act
14 that use the exact same language. For example, 8 U.S.C. §1254a(a)(5) states, “granting of
15 temporary protected status under this section shall not be considered to be inconsistent with the
16 granting of nonimmigrant status under this chapter.” In other words, granting temporary
17 protected status is not inconsistent with granting nonimmigrant status. 8 U.S.C. §
18 1182(a)(6)(C)(ii)(II) states, “. . . the alien shall not be considered to be inadmissible under any
19 provision of this subsection based on such representation.” In other words, the alien is not
20 inadmissible based on the referenced representation. 8 U.S.C. § 1182(a)(10)(D)(ii) states,
21 “. . . the alien shall not be considered to be inadmissible under any provision of this subsection
22 based on such violation.” In other words, the alien is not inadmissible based on the referenced
23 violation. 8 U.S.C. § 1227(a)(3)(D)(ii) states, “. . . the alien shall not be considered to be
24 deportable under any provision of this subsection based on such representation.” In other words,

1 the alien is not deportable based on the referenced representation. 8 U.S.C. § 1227(a)(6)(B)
2 states, “. . . the alien shall not be considered to be deportable under any provision of this
3 subsection based on such violation.” In other words, the alien is not deportable based on the
4 referenced violation. 8 U.S.C. § 1101(a)(44)(c) states, “[a]n individual shall not be considered to
5 be acting in a managerial or executive capacity . . . merely on the basis of the number of
6 employees” the individual supervises or has supervised or directed. In other words, the
7 individual is not acting in a managerial or executive capacity based solely on the number of
8 employees supervised.⁴

9 Thus, the plain meaning of “shall not be considered to be” is “is not.”

10 2. “Conferred Upon the Person” Means Bestowed or Granted Upon the Person.

11 Confer means “[t]o grant (something) as a gift, benefit, or honor” and is synonymous
12 with the word “bestow.” *Confer*, Black’s Law Dictionary (11th ed. 2019). Thus, as used in
13 Section 15(b)(1), “conferred upon a person” means the granting (or bestowing) of a gift, benefit
14 or honor upon the person. In this instance, the gift, benefit, or honor is “the status of a national
15 of the United States.”

16 3. “Until the Date The Person Establishes To The Satisfaction of The Secretary of
17 State . . . [.]”

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20 ⁴ “Shall not be considered to be” language is found in other statutes and supports the conclusion
21 that the phrase means “is not”. *See, e.g.*, 42 U.S.C. § 423(d)(2)(C) (“An individual shall not be
22 considered to be disabled for purposes of this subchapter if alcoholism or drug addiction
23 would . . . be a contributing factor”); 42 U.S.C. § 423(d)(5)(A) (“An individual shall not be
24 considered to be under a disability unless he furnishes such medical and other evidence”);
15 U.S.C. § 78c(a)(4)(B) (“A bank shall not be considered to be a broker because the bank
engages in any one or more of the following activities”); 16 U.S.C. 1536(o)(2) (“any taking
that is in compliance with the terms and conditions specified in a written statement . . . shall not
be considered to be a prohibited taking of the species concerned.”).

1 “Until the date the person establishes to the satisfaction of the Secretary of State” is a
 2 date specific to an individual applicant. In this case, the record does not identify the specific date
 3 Plaintiff’s mother established to the satisfaction of the Secretary of State that she met the
 4 requirements of Section 1408(4). It identifies only that this occurred after the amendment was
 5 enacted. (*See* Dkt. No. 6 at 6.) For purposes of analyzing Section 15(b), the Court will use
 6 November 1, 1986 as the date Plaintiff’s mother established to the satisfaction of the Secretary of
 7 State that she met the requirements of Section 1408(4).⁵

8 4. Having Interpreted the Operative Language of Section 15(b), Its Meaning is Clear.

9 The meaning of Section 15(b) is clear. It can be read as follows:

10 [§ 1408(4)] shall apply to persons born before, on, or after the date of the enactment
 11 of this Act. In the case of a person born before the date of the enactment of this
 Act-

12 (1) the status of a national of the United States [is not granted (or bestowed)]
 13 upon the person until [November 1, 1986]; and

14 (2) the person shall not be eligible to vote in any general election in American
 Samoa earlier than January 1, 1987.

15 **C. For Persons Born Before the Amendment to Section 1408(4), National Status is**
 16 **Conferred on a Date Certain Not “At Birth.”**

17 Plaintiff argues that on the date a person is conferred (or granted) national status under
 18 Section 15(b)(1), that person automatically is a national at birth pursuant to the first part of
 19 Section 1408 which states, “the following shall be nationals, but not citizens, of the United States
 20 at birth[.]” Defendant asserts a person is only a national as of the date the status is conferred and
 21 otherwise does not relate back to their date of birth because of the proviso language contained in
 22 Section 15(b)(1). Thus, using the date of November 1, 1986 as the presumed date Plaintiff’s

23 ⁵ The actual date can be any date after the date of enactment. November 1, 1986 is only being
 24 used as a placeholder to assist in interpreting the language of Section 15(b).

1 mother was granted U.S. national status under Section 15(b)(1), Plaintiff asserts she became a
2 U.S. national as of the date of her birth, while Defendant asserts she became a U.S. national only
3 as of November 1, 1986.

4 Plaintiff advances that the failure to recognize his mother as a national at birth ignores the
5 clear language—specifically, the “at birth” language—contained in the first part of Section 1408
6 and that doing so would be a violation of the canon of statutory interpretation which requires that
7 courts must give effect to each word and not render language inoperative or meaningless. (Dkt.
8 No. 14 at 7.) However, as already noted, although Section 15(b) identifies that the amendment to
9 Section 1408(4) applies “to persons born before, on, or after the date of the enactment of” the
10 1986 amendment, Congress placed a specific limitation on persons born before the date of
11 enactment. That limitation plainly identifies that such persons are not granted (or bestowed)
12 national status until a date certain. *See supra* Section III.B. Again, for persons born before the
13 enactment, Section 15(b) identifies the “prerequisite for *obtaining* U.S. nationality[.]”
14 *Koonwaiyou*, 830 Fed. Appx. At 567 (emphasis added). Section 15(b), therefore, allows a
15 person born before the date of enactment to avail themselves of U.S. nationality status through
16 Section 1408(4), while limiting the status of national of the United States to a date certain. Thus,
17 there is no conflict between the “at birth” language contained in the first part of Section 1408 and
18 the limiting language contained in Section 15(b) because the full scope of Section 1408(4) (and,
19 therefore, the full scope of Section 1408 as a whole) is restricted for persons born before the date
20 of enactment.

21 In addition, if, as Plaintiff argues, the 1986 amendment was meant to treat persons born
22 before the date of enactment the exact same as persons born on or after the date of the enactment
23 (and otherwise the same as persons who qualify under other parts of Section 1408), the very first
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1 sentence of Section 15(b) accomplishes that goal without the need for any additional language.
2 To accept Plaintiff's position that persons born before the 1986 amendment are indistinguishable
3 from any other person who qualifies under any part of Section 1408, one would have to conclude
4 that everything after the first sentence of Section 15(b) has no purpose and otherwise is
5 superfluous. This would include the prohibition on persons born before the date of enactment
6 from voting until after January 1, 1987 as identified in Section 15(b)(2). If persons born before
7 the enactment were meant to be treated in all regards the same as all others under Section 1408,
8 why limit their voting rights as compared with persons who qualify under parts (1), (2), and (3)
9 of Section 1408?⁶

10 Plaintiff also asserts that the acquisition of nationality for persons born before the date of
11 enactment is retroactive so long as "Congress included language specifying that the status relates
12 back to birth once obtained", citing to *Friend v. Holder*, 714 F.3d 1349 (9th Cir. 2013). (Dkt.
13 No. 14 at 8.) While the Court agrees that *Friend* stands for this proposition, this is not what
14 Congress did in this case. For persons born before the date of enactment, Congress placed a
15 limitation on them by identifying a date certain on which their status as a U.S. national is
16 conferred. *See supra* Section III.B. Section 15(b)(1) is devoid of any "language specifying that
17 the status relates back to birth once [conferred]." If Congress meant for the acquisition of
18 nationality status for persons born before the date of enactment to be retroactive to their birth, it
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20 ⁶ Plaintiff asserts Section 15(b) seeks to ensure "that those [born before the date of enactment] do
21 not unilaterally claim those benefits without first permitting the Secretary of State to verify their
22 eligibility." (Dkt. No. 14 at 9.) However, if, as argued by Plaintiff, persons born before the date
23 of enactment were to be treated equally with all other persons who qualify under Section 1408, it
24 is unclear why prohibiting persons born before the date of enactment from unilaterally claiming
benefits of U.S. national status was necessary. After all, persons who are U.S. nationals under
subsections (1), (2), or (3) of Section 1408 also can encounter evidentiary problems in verifying
their U.S. national status.

1 would not have included any language after the first sentence of Section 15(b) or it would have
2 specifically stated in Section 15(b)(1) that upon national status being conferred said status is
3 retroactive to the person's date of birth. Congress did neither of these.

4 Plaintiff also asserts that "when Congress does *not* want to make a status fully retroactive
5 despite using the 'at birth' language, it knows how to do so." (Dkt. No. 21 at 3.) Plaintiff points
6 to 8 U.S.C. § 1435(d)(1) as an example of this wherein Congress specifically stated that
7 citizenship is not construed as being conferred "during any such period in which the person was
8 not a citizen." The language is clear in that particular statute. Likewise, however, Section 15(b)
9 also is clear, "[i]n the case of a person born before the date of the enactment of this Act-(1) the
10 status of national of the United States shall not be considered to be conferred upon the person
11 until the date the person establishes to the satisfaction of the Secretary of State" that they meet
12 the requirements of Section 1408(4) . . . [.]” As applied in this case, this means: “[i]n the case of
13 a person born before the date of the enactment of this Act-(1) the status of a national of the
14 United States [is not granted (or bestowed)] upon the person until [November 1, 1986]”
15 Again, such language limits the application of Section 1408(4) as to persons born before the date
16 of enactment and, therefore, is not in conflict with the “at birth” language contained at the
17 beginning of Section 1408.

18 Lastly, the placement of Section 1408(4) within Part 1 of Subchapter III of Chapter 12 of
19 Title 8 (which relates to nationality and citizenship) does not weigh for or against either party's
20 interpretation in this case. First, Section 1408(4) existed prior to the 1986 amendment and it
21 makes sense that an amendment to a particular section, such as Section 1408(4), would remain in
22 the same place within the Immigration and Nationality Act after the amendment. Second, and
23 more importantly, regardless of the particular placement of Section 1408(4) within the
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1 Immigration and Nationality Act, the plain language of Section 15(b) “says . . . what it means
2 and means . . . what it says there.” *Connecticut Nat. Bank*, 503 U.S. at 254. In this case, Section
3 15(b)(1) plainly states U.S. national status “shall not be considered to be conferred upon the
4 person until” a date certain, which means U.S. national status is not granted (or bestowed) upon
5 the person until a date certain.

6 Accordingly, for the reasons stated herein, the Court concludes that pursuant to 8 U.S.C.
7 § 1408(4) as amended by Sections 15(a) and 15(b) of Public Law 99-396, 100 Stat 837 (1986),
8 Plaintiff’s mother’s status as a national of the United States commenced on the date it was
9 conferred and was not retroactive to her date of birth.⁷

10 V. CONCLUSION

11 Having considered Defendant’s motion, the briefing of the parties, oral argument of
12 counsel, and the remainder of the record, the Court finds and ORDERS that Defendants’ Motion
13 to Dismiss the Complaint (Dkt. No. 12-1) is GRANTED and the Complaint (Dkt. No. 6) is
14 DISMISSED with prejudice.

15 Dated this 3rd day of March, 2022.

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18 _____
David G. Estudillo
United States District Judge

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22 _____
23 ⁷ Plaintiff noted at oral argument that this conclusion results in persons born before the date of
24 enactment from passing national status to their children. While the Court acknowledges the
severity of this result, it is unable to consider this consequence because the plain language of
Section 15(b) is controlling.