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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 United States of America,

No. CV-12-00482-PHX-DGC

10 Plaintiff,

**ORDER**

11 v.

12 Grace Xunmei Li,

13 Defendant.  
14

15 Plaintiff has filed a motion for leave to modify a discovery deadline in order to  
16 disclose an expert witness. Doc. 125. The motion is fully briefed and neither party  
17 has requested oral argument. Docs. 136, 141. The motion will be denied.

18 Defendant has filed a motion to resume the deposition of Gang Chen. Doc. 128.  
19 The motion is fully briefed. Docs. 132, 142. Plaintiff's request for oral argument is  
20 denied because the issues have been fully briefed and oral argument will not aid the  
21 Court's decision. *See* Fed. R. Civ. P. 78(b); *Partridge v. Reich*, 11 F.3d 920, 926  
22 (9th Cir. 1998). For the reasons set forth herein, the Court will deny the motion.

23 **I. Motion to modify discovery deadline to add expert.**

24 Plaintiff seeks leave of Court to modify the discovery deadlines to add an expert  
25 document examiner. Doc. 125. Case management schedules "may be modified only  
26 for good cause[.]" Fed. R. Civ. P. 16(b)(4); *see Johnson v. Mammoth Recreations,*  
27 *Inc.*, 975 F.2d 604, 608 (9th Cir. 1992); *Wong v. Regents of the Univ. of Cal.*, 410  
28 F.3d 1052, 1062 (9th Cir. 2005). "Good cause" exists when a deadline "cannot

1 reasonably be met despite the diligence of the party seeking the extension.” Fed. R.  
2 Civ. P. 16 cmt. (b). Thus, “Rule 16(b)’s ‘good cause’ standard primarily considers the  
3 diligence of the party seeking the amendment.” *Johnson*, 975 F.2d at 609.

4 Plaintiff asserts the expert is needed to testify that the handwriting on the N-400  
5 application of Gang Chen – the individual Plaintiff alleges to be Defendant’s bigamous  
6 husband – is Defendant’s handwriting. *Id.* at 2. Defendant has conceded the  
7 handwriting is hers, and has offered to serve an amended response to the requests for  
8 admission clarifying such. Doc. 136. The discovery deadline will not be extended to  
9 accommodate an unnecessary expert witness. The motion is denied without prejudice  
10 and Defendant is hereby ordered to amend her response to Plaintiff’s requests for  
11 admission to clarify her position on this matter.

12 **II. Motion to resume deposition of Gang Chen.**

13 **A. Background.**

14 Defendant has filed a motion to resume the deposition of Gang Chen under fair  
15 and equitable circumstances. Doc. 128. Defendant argues that the government  
16 deported Chen to China before she had a full and fair opportunity to depose him, and  
17 that Chen’s testimony is vital to corroborating her defense that she never intended to be  
18 legally married to him and Anthony Bambrough at the same time.

19 Gang Chen was placed in removal proceedings on July 17, 2010. Doc. 132 at  
20 3. He was arrested and placed in custody on May 19, 2012, and was ordered removed  
21 on January 7, 2013. *Id.* Chen was declared a flight risk by the immigration court, and  
22 the Board of Immigration Appeals denied his appeal of his order of removal. *Id.* Chen  
23 sought review in the Ninth Circuit Court of Appeals and simultaneously moved for a  
24 stay of removal pending the resolution of his petition. *Id.* at 4.

25 Meanwhile, Chen was deposed in this case on September 3 and 13, 2013, at the  
26 West County Detention Facility in Richmond, California. *Id.* Defendant asserts that  
27 Plaintiff’s attorneys questioned Chen for the entirety of both sessions. Upon  
28 concluding the session on September 13, counsel for both parties agreed to schedule

1 another session to complete Chen’s deposition on October 4, 2013. On September 5,  
2 2013, however, Chen had withdrawn his motion for a stay from the Ninth Circuit, and  
3 on September 27, 2013, Chen was removed to China. *Id.* at 7.

4 Defendant asserts that the Plaintiff, as “The Government,” created an  
5 inequitable situation by deporting Chen. She asks the Court for one of three alternative  
6 forms of relief so that she may finish Chen’s deposition in person: (1) order Plaintiff to  
7 grant Chen temporary admission into the United States under 8 U.S.C.  
8 § 1182(d)(5)(A); (2) order Plaintiff to fly Chen to a U.S. airport and allow the  
9 deposition to continue in an international zone at the airport; or (3) order Plaintiff to  
10 pay to send defense counsel to China to depose Chen. Doc. 128 at 5-6. The Court has  
11 already rejected the last alternative in a text entry order on October 18, 2013. The  
12 Court now rejects the other requested forms of relief.

13 **B. Temporary parole into the United States.**

14 Defendant argues that the government has the power to parole Chen back into  
15 the United States for a limited time to complete his deposition under 8 U.S.C.  
16 § 1182(d)(5)(A). This section provides:

17 The Attorney General may. . . in his discretion parole into the United  
18 States temporarily under such conditions as he may prescribe only on a  
19 case-by-case basis for urgent humanitarian reasons or significant public  
20 benefit any alien applying for admission to the United States, but such  
21 parole of such alien shall not be regarded as an admission of the alien and  
22 when the purposes of such parole shall, in the opinion of the Attorney  
23 General, have been served the alien shall forthwith return or be returned  
24 to the custody from which he was paroled and thereafter his case shall  
25 continue to be dealt with in the same manner as that of any other  
26 applicant for admission to the United States.

27 The Court has no authority to review denials of discretionary immigration relief,  
28 including “any other decision or action of the Attorney General or the Secretary of  
Homeland Security the authority for which is specified under this subchapter to be in  
the discretion of the Attorney General or the Secretary of Homeland Security.” 8

1 U.S.C. § 1252(a)(2)(B). The Attorney General has not exercised his discretion to  
2 grant relief to Chen, and Defendant cites no authority under which this Court could  
3 compel the Attorney General to exercise such discretion.<sup>1</sup>

4 Defendant's inclusion of the declaration of Jodilyn Marie Goodwin, describing  
5 her client's parole for the purposes of being deposed, is not persuasive. A brief  
6 description of a situation in which the Attorney General's discretion was, in fact,  
7 exercised to grant parole is not legal authority for this Court to order the Attorney  
8 General to do so here.

9 Defendant does not provide any other authority under which this Court could  
10 compel the government to produce a non-employee, third-party witness, currently  
11 residing outside of its subpoena power. *See* Fed. R. Civ. P. 45(c). This extraordinary  
12 form of relief is not justified and this request is denied.

13 **C. Deposition in the international zone of a U.S. airport.**

14 Defendant cites the same statute, 8 U.S.C. § 1182(d)(5)(A), to support its  
15 request that the Court order Chen's deposition to be taken in the international area of a  
16 U.S. airport. For reasons stated above, the Court concludes that the statute does not  
17 authorize this relief, and Defendant has identified no other authority for ordering the  
18 Attorney General to transport Chen to the international area of a U.S. airport for the  
19 purpose of taking his deposition.

20 **D. Remote video deposition.**

21 The Federal Rules of Civil Procedure authorize remote video depositions. Fed.  
22 R. Civ. P. 30(b)(4) ("the parties may stipulate – or the court may on motion order –  
23 that a deposition be taken by telephone or other remote means"). The party seeking to  
24 take a deposition by video-teleconferencing must establish a legitimate reason for its

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26 <sup>1</sup> Even if the Court had power to compel the Attorney General to act, it would not do so.  
27 The statutory provision that provides discretion to temporarily parole parties into the  
28 United States allows such action only "for urgent humanitarian reasons or significant  
public benefit." Defendants have made no showing that the deposition of a third party  
witness in this case is required for urgent humanitarian reasons or that it would provide  
significant public benefit.

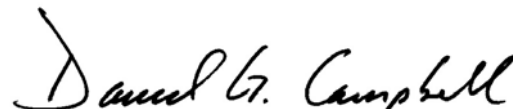
1 motion. *Brown v. Carr*, 253 F.R.D. 410, 412 (S.D. Tex. 2008); *Brown v. Carr*, 236  
2 F.R.D. 311, 312 (S.D. Tex. 2006); *Cressler v. Neuenschwander*, 170 F.R.D. 20, 21  
3 (D. Kan. 1996)). The Court has already found that Chen's removal to China makes  
4 video-teleconferencing the most reasonable, cost-efficient manner in which to finish his  
5 deposition. Doc. 117. Defendant – the party opposing the video deposition – now  
6 bears the burden of showing prejudice. *Carr*, 253 F.R.D. at 412.

7 Defendant's arguments that she would be prejudiced by finishing the deposition  
8 by remote video are not persuasive. Defendant cites concerns about the accuracy of  
9 Chen's testimony, the nuances of translating his testimony, the ability to hear clearly,  
10 Chen's access to his American counsel, and Li's access to Chen, his counsel, and the  
11 interpreter. Doc. 142 at 1. Concerns about accuracy due to language or translation  
12 barriers would exist in any deposition of Chen, and the Court is not persuaded that  
13 modern video-conference technology will present audio problems. Nor can the Court  
14 credit concerns about access to counsel when a video conference has not been  
15 attempted.

16 **IT IS ORDERED:**

- 17 1. The motion for leave to modify a discovery deadline (Doc. 125) is  
18 **denied**.
- 19 2. The motion to resume the deposition of Gang Chen under fair and  
20 equitable circumstances (Doc. 128) is **denied**.
- 21 3. Mr. Chen's deposition shall be completed by video conference.

22 Dated this 19th day of December, 2013.

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David G. Campbell  
United States District Judge