

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SHENG ZHENG,)	
)	
Plaintiff,)	
)	
v.)	Case No. 17-cv-2734-CM-TJJ
)	
ELAINE DUKE, <i>Acting United States Secretary</i>)	
<i>of Homeland Security</i> , and JEFF SESSIONS,)	
<i>Attorney General of the United States</i> ,)	
)	
Defendants.)	

**ORDER DENYING WITHOUT PREJUDICE APPLICATION TO
PROCEED WITHOUT PREPAYMENT OF FEES OR COSTS**

Plaintiff has filed a Motion to Proceed Without Prepayment of Fees (ECF No. 3). Plaintiff declares he is unable to pay the costs of these proceedings and is entitled to the relief requested. He alleges the USCIS has delayed unreasonably the adjudication of his green card I-485 application. In his Motion, he requests permission to proceed with this case without the prepayment of fees and costs, including the filing fee.¹

Under 28 U.S.C. § 1915(a)(1), the Court may authorize commencement of any suit, action or proceeding, civil or criminal, without prepayment of fees upon submission of a financial affidavit that shows the applicant is unable to pay such fees. To succeed on a motion to proceed without prepayment, also known as a motion to proceed *in forma pauperis*, the applicant has the burden to show a financial inability to pay the required filing fees.² The decision to grant or deny

¹ See 28 U.S.C. § 1914(a) (“The clerk of each district court shall require the parties instituting any civil action, suit, or proceeding in such court . . . to pay a filing fee . . .”).

² *Lister v. Dept. of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005).

in forma pauperis status under Section 1915 lies within the sound discretion of the trial court.³ In ruling on such applications, however, a court must not act arbitrarily or deny the application on erroneous grounds.⁴ In construing the application and supporting financial affidavit, courts generally seek to compare an applicant's monthly expenses to monthly income.⁵

Upon review of the Affidavit of Financial Status, the Court notes that Plaintiff has checked the box that he is single, but lists a name and age for his spouse. Plaintiff has also written "N/A" on several parts of the form, specifically the sections asking for financial information about his spouse's employment, liquid assets, monthly debts and expenses, and other assets. Because these questions were marked "N/A," the Court is unable to determine whether Plaintiff has shown a financial inability to pay the required filing fees. The Court therefore will deny Plaintiff's Motion, but without prejudice to Plaintiff refiling a Motion to Proceed Without Prepayment of Fees and completely answered supporting Affidavit of Financial Status.⁶ If the answer to a question is "zero" or "none," then Plaintiff shall state this rather than "N/A" on any re-filed Affidavit. Any such Motion and Affidavit shall be filed no later than **February 9, 2018**. Plaintiff is cautioned that failure to refile his Motion by this date may result in the Court recommending the dismissal of this

³ *Id.*

⁴ *Id.* at 1313.

⁵ See, e.g., *Alexander v. Wichita Hous. Auth.*, No. 07-1149-JTM, 2007 WL 2316902, at *1 (D. Kan. Aug. 9, 2007) (adopting report and recommendation that motion be denied where plaintiff's net income exceeded his monthly expenses by more than \$700); *Patillo v. N. Am. Van Lines, Inc.*, No. 02-2162, 2002 WL 1162684, at *1 (D. Kan. Apr. 15, 2002) (denying motion where plaintiff and spouse had monthly net income of \$2,000 and monthly expenses of \$1715); *Webb v. Cessna Aircraft*, No. 00-2229, 2000 WL 1025575, at *1 (D. Kan. July 17, 2000) (denying motion because plaintiff's monthly income exceeded her monthly expenses by approximately \$600); *Buggs v. Riverside Hosp.*, No. 97-1088-WEB, 1997 WL 321289, at *2 (D. Kan. Apr. 9, 1997) (denying motion where plaintiff had net monthly income of approximately \$1500 and monthly expenses of \$1,115).

⁶ The Court's forms "Motion to Proceed Without Prepayment of Fees" and "Affidavit of Financial Status" are available on the Court's website at <http://www.ksd.uscourts.gov/forms/>.

case.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Proceed Without Prepayment of Fees (ECF No. 3) is DENIED WITHOUT PREJUDICE to refiling another Motion and a completely answered supporting financial affidavit. Any such Motion (with supporting financial affidavit) must be filed no later than **February 9, 2018**.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 19th day of January, 2018.

A handwritten signature in cursive script, reading "Teresa J. James", is written above a horizontal line.

Teresa J. James
U. S. Magistrate Judge