

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

XIANGYUAN ZHU,

Plaintiff,

v.

Case No. 07-4001-JAR

WILLIAM H. JOHNS,

Defendant.

**ORDER**

This matter is before the court on plaintiff's application for leave to file action without payment of fees, costs, or security (Doc. 2), seeking to proceed in this action *in forma pauperis*.

28 U.S.C. § 1915 allows the court to authorize the commencement of a civil action "without prepayment of fees or security therefor, by a person who submits an affidavit that . . . the person is unable to pay such fees or give security therefor." "Proceeding *in forma pauperis* in a civil case 'is a privilege, not a right—fundamental or otherwise.'"<sup>1</sup> The decision to grant or deny *in forma pauperis* status under section 1915 lies within the sound discretion of the trial court.<sup>2</sup>

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<sup>1</sup>*Barnett ex rel. Barnett v. Northwest School*, No. 00-2499-KHV, 2000 WL 1909625 (D. Kan. Dec. 26, 2000) (quoting *White v. Colorado*, 157 F.3d 1226, 1233 (10th Cir. 1998)).

<sup>2</sup>*Id.* (citing *Cabrera v. Horgas*, No. 98-4231, 1999 WL 241783, at \*1 (10th Cir. April 23, 1999)).

The court finds that plaintiff's application is incomplete. Plaintiff originally filed her claim in United States District Court for the District of Columbia.<sup>3</sup> This case has been transferred to the United States District Court of Kansas.<sup>4</sup> Plaintiff's filed "Application to Proceeding Without Repayment of Fees and Affidavit" is significantly less thorough than the application used in Kansas District Court. For example the application used by plaintiff does not ask about plaintiff's marital status, whether plaintiff received support from a spouse, or whether plaintiff has any cash on hand, or receives unemployment or social security payments. Further, the application does not ask plaintiff to list her expenses such as rent or mortgage payment, utilities, and other debts.

The court is unable, based upon the information provided, to adequately assess plaintiff's financial circumstances in order to make a determination of her suitability for *in forma pauperis* status. The court, therefore, finds that the affidavit is insufficient to support her application, and, as a result, will deny her application for *in forma pauperis* status without prejudice.

Because this denial will be without prejudice, plaintiff shall have leave of court to file a new application for *in forma pauperis* status including a completed affidavit supplying the information noted above as missing or incomplete, as well as any other information that might be pertinent to the court's determination of whether to allow plaintiff to proceed *in*

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<sup>3</sup> See Complaint (Doc. 1).

<sup>4</sup> See Transfer Order (Doc. 3).

*forma pauperis* in this case. Plaintiff should make every effort to read each section of the application carefully, and to answer each applicable question contained in the form affidavit in as complete a manner as possible.

**IT IS THEREFORE ORDERED** that plaintiff's application for leave to file action without payment of fees, costs, or security (Doc. 2) is hereby denied without prejudice.

**IT IS FURTHER ORDERED** that plaintiff is granted leave of court to file a new application for *in forma pauperis* status, supported by a completed financial affidavit as supplied by this court. The Clerk's office is directed to mail the present order and accompanying Affidavit of Financial Status in Support of Application for Appointment of Counsel used in the United States District Court for the District of Kansas to plaintiff..

**IT IS SO ORDERED.**

Dated this 3rd day of January, 2007, at Topeka, Kansas.

s/ K. Gary Sebelius  
K. Gary Sebelius  
U.S. Magistrate Judge