

2'08mj 578

**AFFIDAVIT**

**A. Introduction**

I, Crosby Brackett, being duly sworn, depose and say that:

1. I am employed as a Special Agent (SA) of the Federal Bureau of Investigation (FBI). I have been employed by the FBI since February 2007. After completing initial training, I was assigned to work foreign counterintelligence matters. I investigated foreign counterintelligence matters for over one year. I am currently assigned to work white collar crime, including fraud and public corruption investigations within the Norfolk Division. Prior to my employment with the FBI, I was a police officer for the City of Lowell, Massachusetts. I was employed as a police officer for over eleven and a half years. For over eight years I served as a detective assigned to investigate numerous criminal violations.

2. I have conducted or assisted other law enforcement agents in numerous investigations of alleged criminal violations. I have obtained or participated in the execution of over one hundred search or arrest warrants for violations of federal, state or local law.

3. The facts and information contained in this affidavit are derived from my own investigation, interviews of various witnesses, review of records, and information provided by other investigators including SA Brett Kolb of Immigration and Customs Enforcement and SA Simone Genna of the Naval Criminal Investigative Service. The review of records includes documents and information submitted by YUE CHENG in applying for United States citizenship and employment with the Federal Bureau of Investigation.

4. This affidavit is made in support of: a criminal complaint and warrant for the arrest of YUE CHENG (CHENG) charging her with violating:

- a) Title 18, United States Code, Section 371, Conspiracy;
- b) Title 18 United States Code Section 287, False claim;
- c) Title 18 United States Code Section 1015(a) and 2, False Statements Related to Naturalization or Citizenship;
- d) Title 18 United States Code Section 1425 and 2, Procurement of Citizenship or Naturalization Unlawfully;
- e) Title 18 United States Code Section 1001, False Statements.

**B. Overview**

1. CHENG was born on April 12, 1982 in Hang Zhou, People's Republic of China (PRC). CHENG owns an apartment in the PRC. She reported that she purchased the apartment jointly with her parents in September 1998.

2. In January 1999, CHENG emigrated to the United States. CHENG reported that her reason for emigrating to the United States was to attend college. CHENG disclosed attendance at two colleges between August 1999 and May 2003.

3. CHENG reported several trips between the PRC and United States while she attended college and after she completed her degree. CHENG provided two B-2 tourist Visas to the FBI. Both were valid for three months. The first was issued in July 1998. SA Kolb confirmed that CHENG used this Visa to travel to the United States from July 19, 1998 to August 03, 1998. The second Visa was issued December 01, 1998. SA Kolb confirmed that CHENG used this Visa to enter the United States on January 07, 1999. Immigration records show that CHENG subsequently obtained an F-1, student Visa, which would have allowed CHENG to stay in the United States as long as she attended school. CHENG's immigration file contained a form I-20-ID, which CHENG signed in September 2001. The form certified that CHENG was seeking to stay in the United States temporarily and solely for the purpose of attending college. The form showed CHENG's living expenses and college tuition for the next nine months would be \$17,533.00. CHENG had \$18,300.00 in personal funds to pay for these expenses.

4. Background information provided by CHENG showed she did not work from March 1997 to February 2002. Thereafter, her only employment from February 2002 to March 2003 was as a student assistant/tutor at one of her colleges. CHENG reported that her father was a retired factory worker and her mother was a retired hotel worker. She reported that they were now involved in the Chinese stock market.

5. On September 29, 2001, approximately one year and eight months before CHENG finished college, she was married in Las Vegas, Nevada. She married a United States person who was thirty eight years older than CHENG, named J.H. CHENG reported that she moved to 402 South Garfield Avenue, Unit #21, Alhambra, California in October 2001, (just after her September 29, 2001 marriage). CHENG, J.H. and a roommate named J. X. later reported that the three lived together at 402 South Garfield Avenue, Unit #21, Alhambra, California.

6. Immigration paperwork showed that CHENG applied to become a permanent United States resident based on her marriage to J.H. Several forms were filed by CHENG and/or J.H. Based on these forms and other information provided by both CHENG and J.H., CHENG was approved for conditional permanent residency status in the United States. Her permanent resident card shows that she became a permanent resident on September 20, 2002.

7. Information provided by CHENG revealed that she completed a Bachelor's Degree program in Business Administration at California State University, Northridge in May 2003. Within a couple months of obtaining her Bachelor's degree, CHENG joined the United States Navy as an enlisted sailor. CHENG's Form DD-214, Certificate of Release or Discharge from Active Duty, shows that she entered the United States Navy on July 08, 2003. According to SA Genna, the United States Navy does not accept immigrants unless they have lawful permanent residence or have been naturalized; therefore, CHENG could not have enlisted in the United States Navy if she had not obtained her Permanent Residence Status.

8. Information provided by CHENG and/or information contained in CHENG's FBI background investigation showed that CHENG was stationed in the Norfolk, Virginia area after she completed initial United States Navy training. Although she was stationed in the area of Norfolk, Virginia, J.H. remained in California. Navy records show CHENG received an increased adjustment in pay from the United States Navy based on her marriage to J.H. and his residence in California.

9. Immigration paperwork including Form N-400, Application for Naturalization, showed that CHENG applied to become a Naturalized United States citizen based on her military service. On September 28, 2004, in the presence of an adjudications officer assigned to the Immigration and Naturalization Service in Norfolk, Virginia, CHENG swore and affirmed under penalty of perjury that the contents of her Form N-400 and accompanying evidence were true and correct to the best of her knowledge and belief. Thereafter, on September 28, 2004, Cheng's naturalization was approved, she took the Oath of Allegiance, and became a naturalized citizen of the United States. The affirmation, approval and Oath all occurred in Norfolk, Virginia, in the Eastern District of Virginia.

10. Background information provided by CHENG revealed that CHENG and J.H. divorced in 2006. In the same year, CHENG applied for a Special Agent position for the FBI. According to current information listed on the FBI's recruiting website [FBIJOBS.GOV](http://FBIJOBS.GOV), the FBI requires all Special Agents to be citizens of the United States or Northern Mariana Islands. Based on this requirement, CHENG would have been excluded from employment as an FBI Special Agent if she had not obtained her United States Naturalization.

11. CHENG was admitted to the FBI Academy in Quantico, Virginia. CHENG reported to the FBI Academy on Sunday, September 30, 2007. She was processed into the FBI Academy and began New Agent Training on Monday, October 01, 2007. Although CHENG was hired by the FBI and accepted to New Agent Training, concerns arose during the applicant process, and while CHENG attended New Agent Training at the FBI Academy.

12. Prior to conducting a pre-employment polygraph examination of CHENG, the Special Agent conducting the polygraph noticed that CHENG married a United States person who was significantly older than CHENG. The Special Agent asked CHENG two questions regarding her marriage. The first, was a two part question. The Special Agent asked CHENG if her marriage was a legitimate marriage and if the marriage had been consummated? CHENG responded affirmatively. CHENG was then asked if she married her husband in order to become a United States citizen? CHENG did not give a direct answer, instead she replied, "I did eventually become a United States citizen."

13. On May 14, 2007, a FBI Special Investigator (SI) interviewed T.C. a manager of Candet Properties, 430 South Garfield Street, Suite 338, Alhambra, California. T.C. managed an apartment complex located at 402 South Garfield Avenue, Alhambra, California. J.H. and CHENG reported apartment number twenty one as their residence after they were married. T.C. told SI that he felt that CHENG and J.H. were in fact not man and wife; however, T.C. cited no other reason to assume that they were not married other than their age difference.

14. SI reviewed the rental agreement for 402 South Garfield Avenue, unit 21, Alhambra, California, which was provided by T.C. The rental agreement showed that J.H. and CHENG agreed to rent apartment #21 on October 01, 2002 but did not move into the apartment until November 01, 2002. This contrasts CHENG's SF-86 form, which showed that CHENG moved to 402 South Garfield Avenue, Alhambra, California in October 2001.

15. On May 15, 2007, SI interviewed J.H.. J.H. told SI that CHENG planned to go back to China after she finished college, but the events of September 11, 2001 (9-11) changed the way

that CHENG felt about the United States. After 9-11 CHENG decided that she wanted to stay and work in the United States. J.H. advised SI that he told CHENG if she wanted to be sure to stay in the United States, she should consider marrying him and that would keep her in the United States until she decided what she wanted to do. J.H. and CHENG drove to Las Vegas, Nevada with CHENG's friend J.X. and J.H.'s friend K.B. and were married.

16. Based on concerns, which developed during the applicant process and during the FBI Academy, CHENG was interviewed by Special Agents from the FBI's Security Division.

17. On March 03, 2008, two FBI Special Agents interviewed CHENG regarding her marriage to J.H., which occurred on September 29, 2001. The interview took place at the FBI Academy in Quantico, Virginia. During the interview, CHENG admitted that the intent behind her marriage to J.H. was fraudulent. At the conclusion of the interview, a statement was drafted in the handwriting of one of the Special Agents. It contained information that CHENG provided during the interview. After reviewing the statement and making a few changes, CHENG signed the statement. The statement indicated that CHENG provided the written statement voluntarily.

18. According to CHENG's written statement, she married J.H. approximately three months after she met him. She was 19 years old and J.H. was 57 years old. CHENG admitted that her sole purpose in marrying J.H. was to acquire her permanent residence status in the United States. She advised that she discussed the issue with J.H. and he agreed to marry her in order to help her maintain her legal status in the United States. When J.H. first offered to marry CHENG, she thought that there would be a financial obligation to him, but she suspected that J.H. ultimately benefitted from the marriage through sexual favors. CHENG advised that she never told her parents about the marriage. She also advised that throughout their marriage, which lasted from 2001 to 2006, she only lived with J.H. for approximately one year. She admitted that although the paperwork was legal, the intent behind the marriage was fraudulent in that it was motivated by her desire to stay in the United States. CHENG advised that she would not have married J.H. had it not been for this issue. CHENG advised that her intent was to create better educational and career opportunities in the United States rather than to cause harm to the United States or help the Chinese government. CHENG further advised that J.H. may be helping a Romanian girl acquire her legal status in the United States, the same way he helped CHENG.

19. On March 03, 2008, J.H. was also interviewed by Special Agents of the FBI. During the interview, J.H. had several lapses in memory, as it pertained to his relationship with CHENG. He attributed the lapses in memory to it being a difficult time in his life. During the interview he advised that after the September 11, 2001, terrorist attacks on the United States, CHENG wanted to stay in the United States in order to do something for the country. J.H. advised that he knew CHENG's student Visa was going to expire. He told CHENG that he could help her remain in the United States if they got married. He claimed that he married for love, but knew that CHENG was not in love with him.

20. During the March 03, 2008 interview between J.H. and Special Agents of the FBI, J.H. was not consistent when queried about the length of time that he resided with CHENG. J.H. told the interviewers that CHENG moved into his apartment approximately one month after they

were married (on September 29, 2001). During the interview J.H. told the interviewers that he lived with CHENG for two years. He then amended it to one and a half years and then to an unknown time frame. J.H. explained that he was uncertain of the time frame because he and CHENG got into an argument after which she moved out of the apartment for a while. Although he cited the argument, J.H. was not sure why they argued nor the duration that CHENG was gone. J.H. advised that while he lived with CHENG they slept in different bedrooms. He advised that this was due to his recommendation, based on his "horrible snoring" and sleep apnea.

21. During the March 03, 2008 interview, J.H. told the Special Agents that CHENG was fully supported by her parents. According to J.H., CHENG received a monthly check from her parents. The amount of the check was unknown to J.H.. J.H. advised that he never used any of CHENG's money, nor did he ask for money from CHENG. J.H. also advised that CHENG did not bring him with her if she was going to meet other people. He advised that CHENG only let him become acquainted with one friend, J.X. J.H. believed that CHENG was embarrassed by their age difference. J.H. advised that he always knew there would be a time when CHENG would move on.

22. On March 06, 2008, another Special Agent and I interviewed J.D.H. J.D.H. advised that he was one of CHENG's supervisors while she served in the United States Navy. During initial processing at CHENG's duty station, J.D.H. asked CHENG if she married her husband so she could stay in the United States. CHENG acknowledged that this was the reason for her marriage. CHENG told J.D.H. that she wanted to stay in the United States after she earned her degree. She also disclosed that she joined the U.S. Navy to expedite the process of becoming a U.S. citizen. J.D.H. advised that CHENG talked about becoming an FBI Agent or State Trooper. In addition, he advised that CHENG was paid more than other sailors because she claimed that she was married and that her husband lived in California, which had a higher rate of Basic Allowances for Quarters (BAQ).

### **C. Enumerated Alleged Criminal Violations**

1. CHENG's Immigration and Naturalization file reveals that CHENG applied to become a Permanent Resident and/or to Adjust her Status in the United States. Her permanent resident card shows that her application was approved and she became a permanent resident on September 20, 2002. In order to apply to become a Permanent Resident and/or for Adjusted Status in the United States, CHENG and J.H. filed several forms and documents with the United States Immigration and Naturalization Service in California. At least three forms indicate that they were prepared by Attorney Eugene Oak of Los Angeles, California.

2. Signatures on Immigration and Naturalization Form I-485, Application to Register, Permanent Resident or Adjust Status and Form I-130, Petition for Alien Relative show that OAK prepared the forms on February 01, 2002. Form I-485, Application to Register, Permanent Resident or Adjust Status was signed by CHENG. Part two of the form indicates that CHENG's application is based on an immigrant petition, giving her an immediately available immigrant number. Form I-130, Petition for Alien Relative was signed by J.H.. The form indicated that the petition was based on J.H. and CHENG's relationship as husband and wife. The form indicates that the applicant (CHENG) may receive permanent residence status in the United States on a

conditional basis but is required to file a Form I-751 in order to remove the conditional basis of her permanent residency if it was based on a marriage of less than two years.

3. Signatures on Immigration and Naturalization Form I-864, Affidavit of Support Under Section 213A of the Act, shows that Attorney Oak prepared the form on February 15, 2002. J.H. signed the form on February 21, 2002. The form indicates that J.H. would provide income support for CHENG.

**Count One: Title 18, United States Code, Section 371, Conspiracy To Commit Marriage Fraud in violation of Title 8 United States Code, Section 1325(c);**

4. According to CHENG's written statement, she married J.H. approximately three months after she met him. She was 19 years old and J.H. was 57 years old. CHENG admitted that her sole purpose in marrying J.H. was to acquire her permanent residence status in the United States. She advised that she discussed the issue with J.H. and he agreed to marry her in order to help her maintain her legal status in the United States. When J.H. first offered to marry CHENG, she thought that there would be a financial obligation to him, but she suspected that J.H. ultimately benefitted from the marriage through sexual favors. CHENG advised that she never told her parents about the marriage. She also advised that throughout their marriage, which lasted from 2001 to 2006, she only lived with J.H. for approximately one year. She admitted that although the paperwork was legal, the intent behind the marriage was fraudulent in that it was motivated by her desire to stay in the United States. CHENG advised that she would not have married J.H. had it not been for this issue. CHENG advised that her intent was to create better educational and career opportunities in the United States rather than to cause harm to the United States or help the Chinese government. In furtherance of this conspiracy CHENG submitted a false statement on a FORM I-751, Petition to Remove Conditions on Residence, in the Eastern District of Virginia.

**Count Two: Title 18 United States Code Section 287, False Claim**

5. During the March 03, 2008, interview that ASC David C. Raymond and SSA Todd Palmer conducted with J.H., J.H. told them that he never received money from CHENG. Naval Criminal Investigation Service (NCIS), SA Simone M. Genna conducted a review of CHENG's Navy records. SA Genna received records from Defense Finance and Accounting Service-Cleveland, OH (DFAS-CL). The records show that CHENG received additional allotments of money in the form of Basic Allowances for Housing (BAH) because she reported that she was married and her spouse (J.H.) lived in Alhambra, California, which had a higher BAH rate than the location where CHENG was stationed.

6. CHENG's DFAS-CL records show that CHENG received BAH from July 2003 to July 2007. CHENG's BAH allotment from July 2003 to March 2006 was based on CHENG having a dependant (J.H.) and her dependant living in zip code 91801 (Alhambra, CA). CHENG's total BAH allotment from July 2003 to July 2007 was \$61,523.13. If she had been listed as single, rather than as having a dependant, she would have collected BAH based on the area that she was stationed and would not receive extra money for her dependant. The total BAH allotment that she would have received from July 2003 to July 2007 was \$36,662.17. A person who enters a

fraudulent marriage would not be entitled to the extra BAH payments; therefore, CHENG was overpaid \$24,860.97.

7. CHENG had her pay, including the overpayments deposited into three bank accounts: Navy Federal Credit Union account number 2787895701 and Bank of America account number 2346603339 and 7597920096. A large portion of the payments were received while CHENG was stationed at Oceana Naval Air Station in Virginia Beach, Virginia, which is within the Eastern District of Virginia.

8. SA Genna determined that CHENG also applied for a position as a Special Agent with NCIS. During the applicant process CHENG was required to complete a response to the essay question: "Tell me about a problem you confronted and how you solved it"? CHENG responded with a lengthy answer describing how she recognized and intervened in a possible BAH fraud. In her response CHENG described BAH fraud as a serious offense.

**Count Three Title 18 United States Code Section 1015(a) and 2, False Statements Related to Naturalization or Citizenship;**

9. A Form I-751, Petition to Remove Conditions on Residence was contained in CHENG's immigrant file. The document indicates that CHENG's conditional residence was based on her marriage. The form was stamped, June 04, 2004. Signatures on the form showed that it was prepared by United States Navy, Legal Officer Michael Bell on June 01, 2004. At the time that the form was prepared Bell was assigned to Strike Fighter Squadron 105, which is based at Oceana Naval Air Station in Virginia Beach, Virginia. The form was mailed from the Eastern District of Virginia. The form shows that CHENG and J.H. signed the form on May 28, 2004. A statement appears over CHENG and J.H.'s signatures, which in part reads, "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. *If conditional residence was based on a marriage, I further certify that the marriage was entered into in accordance with the laws of the place where the marriage took place and was not for the purpose of procuring an immigration benefit*"

**Count Four: Title 18 United States Code Section 1425 and 2, Procurement of Citizenship or Naturalization Unlawfully;**

10. Paperwork contained in CHENG's immigrant file also includes paperwork associated with CHENG's Naturalization. Included in the file was an Immigration and Naturalization Service form N-400, Application for Naturalization. This form contained a block stamp, which showed that it was approved in Norfolk, Virginia on September 28, 2004, by Pamela D. Rios. CHENG's Certificate of Naturalization confirmed that she was naturalized in Norfolk, Virginia on September 2004. CHENG signed the N-400 form in three places. One signature was in part

11 of the form. It was signed on October 20, 2003. Over the signature is a statement, which in part reads, *"I certify under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, are all true and correct"*. The second signature is in part 13 of the form. Part 13 of the form is an oath that required CHENG to verify her truthfulness on the form. It was subscribed to and sworn to (affirmed) by CHENG before Pamela D. Rios on September 28, 2004. Above the signatures of Rios and CHENG is a statement, *"I swear (affirm) and certify under the penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, including corrections numbered one through four and the evidence submitted by me numbered pages one through one are true and correct to the best of my knowledge and belief"*. Page eight of the form includes the following question and answer:

*a. Question 15. Have you ever committed a crime or offense for which you were not arrested? Answer No*

#### **Count Five: Title 18 United States Code Section 1001, False Statements**

11. On March 10, 2007, CHENG electronically certified an on-line "Questionnaire for National Security Positions", (SF-86 form) for employment with the FBI. The SF-86 form contains four pages of instructions. Included in the instructions is an explanation of the purpose of the form. The instructions explain in part that the form is used to conduct a background investigation on the applicant to determine if the applicant is eligible for a security clearance. It further states that it will be used as the basis for investigation for access to classified information or material. The form explains that the information will be provided voluntarily, but failure to provide the information could affect the applicant's placement or security clearance prospects. The instructions advise that some investigations will include an interview as a normal part of the investigative process, which will allow the applicant to update, clarify, and explain information on their form more completely. Also included in the instructions is a statement explaining that United States Criminal Code (Title 18, section 1001) provides that knowingly falsifying or concealing a material fact is a felony, which may result in fines of up to \$10,000.00 and/or five years imprisonment.

12. On March 12, 2007, CHENG went to the Norfolk FBI office for applicant processing. CHENG participated in a Personnel Security Interview (PSI). During the PSI, her SF-86 form was reviewed. In addition, further questions were asked pursuant to a Security Investigation, Personal Security Interview (PSI) form. CHENG's PSI and PSI form were completed by Norfolk Division Security Officer (SO), Michael Reagan. SO Reagan went over the PSI form with CHENG as required and documented answers that CHENG provided. The first page of the form includes a section in which the interviewer must advise the interviewee of the contents of the section. The section advises the applicant that the purpose of the PSI is to review and finalize the applicants SF-86 form as part of a Personnel Security Investigation that is conducted for employment with the FBI. The instructions further advise the importance of candor and forthrightness during the applicant process. The form indicates that holding back or refraining from discussing any issues of concern can negatively impact the results of the investigation. It



further advises that concealing matters could be the basis for coercion, attempted pressure or influence. The form explains, the scope of the background investigation covers the period from the applicants 18th birthday. SO Reagan informed me that he did not read the instructions verbatim but did fully instruct CHENG on all the advisements that were listed in this section of the form. SO Reagan advised that he emphasized truthfulness during the instructions. CHENG failed to disclose the marriage to J.H. was entered into for the purpose of evading the immigration law of the United States.

13. SO Michael Reagan reviewed both the PSI form and CHENG's completed SF-86 form with CHENG. SO Reagan documented CHENG's answers to PSI questions on the PSI form. Some of the questions and answers on CHENG's PSI form include:

*a. Have you ever committed a serious crime for which you have not been arrested or charged? Answer: No*

*b. Is there anything in your background or activities that someone might use to coerce or blackmail you? Answer: No*

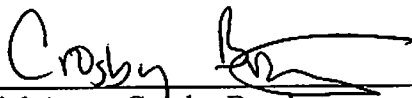
*c. Is there anything in your background or conduct that could raise questions about your trustworthiness or reliability? Answer: No*

*d. Are you aware of any personal conduct, now or in the past, which could cause unfavorable notoriety or embarrassment to the Federal Government?  
Answer: No*

14. SO Michael Reagan noticed that CHENG carefully watched him fill in the answers that she provided to questions on the PSI form. At one point, SO Reagan moved his pen toward the wrong (yes or no) answer and CHENG corrected him. After completing the form, SO Reagan and CHENG signed the form.

15. On the date that the PSI was completed CHENG was required to bring a signature form. The signature form certifies that all statements made on the SF-86 form and accompanying attachments are true, complete and correct to the best of the applicants knowledge and belief. The form also explains that a knowing and willful false statement on the form can be punished by fine or imprisonment under section 1001 of title 18, United States Code. CHENG brought the form with her to the Norfolk FBI office on March 12, 2007. The form was signed and dated by CHENG on March 12, 2007. The form was not collected by SO Michael Reagan. It has not been determined whether the form was turned in before or after the PSI was conducted.

16. Accordingly, pursuant to the facts set forth above, I seek a complaint and warrant to arrest YUE CHENG for violating Title 18, United States Code, Section 371, Conspiracy; Title 18 United States Code Section 287, false claim; Title 18 United States Code Section 1015(a) and 2, False Statements Related to Naturalization or Citizenship; Title 18 United States Code Section 1425 and 2, Procurement of Citizenship or Naturalization Unlawfully; and Title 18 United States Code Section 1001, False Statements.

  
Special Agent Crosby Brackett  
Federal Bureau of Investigation  
Norfolk, Virginia

Subscribed and sworn to before me this 3<sup>rd</sup> day of December 2008 at Norfolk, Virginia.

  
UNITED STATES MAGISTRATE JUDGE

SEEN AND APPROVED:

  
Joseph E. DePadilla  
Assistant United States Attorney