



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**McMillan, Roland Wayne
Law Office of R. Wayne McMillan
140 S. Lake Ave., Suite 303
Pasadena, CA 91101**

**DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014**

Name: LIU, SUNG PAN

A 095-704-688

Date of this notice: 9/11/2015

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Pauley, Roger

Userteam: Docket

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Falls Church, Virginia 22041

File: A095 704 688 – Los Angeles, CA

Date: SEP 11 2015

In re: SUNG PAN LIU

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Roland Wayne McMillan, Esquire

ON BEHALF OF DHS: RR Stern
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] -
Crime involving moral turpitude (not sustained)

Sec. 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] -
Fraud or willful misrepresentation of a material fact (not sustained)

APPLICATION: Termination

The respondent, a native and citizen of Taiwan, is a lawful permanent resident of the United States. The Department of Homeland Security ("DHS") appeals the December 3, 2013, decision of the Immigration Judge terminating these proceedings. The appeal will be dismissed.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The DHS alleges that the respondent is inadmissible to the United States under sections 212(a)(6)(C)(i) and 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(6)(C)(i), 1182(a)(2)(A)(i)(I). The respondent contends that because he is an alien lawfully admitted for permanent residence the DHS has the burden of proof to establish he is seeking admission prior to charging him with being inadmissible, and that burden has not been met. The Immigration Judge agreed with the respondent and terminated proceedings.

We affirm the Immigration Judge's determination that the DHS did not meet the burden of proof to establish the respondent is inadmissible as alleged in the Notice to Appear (NTA). First, we affirm the Immigration Judge's determination that the respondent is not inadmissible under section 212(a)(6)(C)(i) of the Act. Under Section 101(a)(13)(C) of the Act, 8 U.S.C. § 1101(a)(13)(C), an alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States unless at least one of the six exceptions specified in that subsection applies. *Matter of Rovens*, 25 I&N Dec. 623 (BIA 2011); *Matter of Collado*, 21 I&N Dec. 1061 (BIA 1998). Fraud or misrepresentation is not one of the

Cite as: Sung Pan Liu, A095 704 688 (BIA Sept. 11, 2015)

specified exceptions. Sections 101(a)(13)(C)(i-vi) of the Act; *Matter of Pena*, 26 I&N Dec. 613 (BIA 2015). Thus, we affirm the immigration Judge's determination that the respondent is not inadmissible under section 212(a)(6)(C)(i) of the Act.

Second, we also affirm the Immigration Judge's determination that the DHS did not meet its burden of proof to establish the respondent has committed an offense identified in section 212(a)(2) of the Act (I.J. at 2-4). See Section 101(a)(13)(C)(v) of the Act. In this regard, the DHS contends that the respondent stands convicted of "breach of trust" under Taiwanese law. The DHS contends further that this offense is a crime involving moral turpitude and is therefore an offense identified in section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), such that the respondent is seeking an admission under section 101(a)(13)(C)(v).

However, we do not find reversible error in the Immigration Judge's determination that the DHS did not establish by clear and convincing evidence that the respondent has a conviction for purposes of United States immigration law. *Matter of Rovens, supra*. As found by the Immigration Judge, the criminal records in the record are ambiguous. The record includes a criminal judgement dated September 7, 2004, that indicates a judgement dated July 10, 2003, has been revoked (Exh. 4). The September 7, 2004, revocation appears to relate to the alleged "breach of trust" conviction. However, the record does not contain a copy of the July 10, 2003 judgment. Thus, the precise import of the September 7, 2004, judgement is elusive.¹ The record also includes a document captioned "Extraordinary Appeal by Prosecutor General" (Exh 6). The record is unclear as to what effect this type of filing has under Taiwanese law.

In sum, on this record we are not persuaded that the DHS established by clear and convincing evidence that the respondent has committed an offense identified in section 212(a)(2) of the Act or, therefore, that he is an applicant for admission under section 101(a)(13)(C)(v) of the Act.²

We therefore affirm the Immigration Judge's termination of these removal proceedings. Accordingly, the following order will be entered.

ORDER: The DHS appeal is dismissed.


FOR THE BOARD

¹ We note that foreign law is a matter to be proven by the party relying on it. *Matter of Suleimani*, 20 I&N Dec. 99, 106 (BIA 1989).

² The DHS does not point to any evidence of record to support its contention that the respondent admitted he had a conviction at a secondary inspection (DHS Br. at 15). Unsworn attorney statements in briefs or motions do not constitute evidence and are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188 89 n. 6 (1984); *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998); *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
606 South Olive Street
LOS ANGELES, CALIFORNIA 90014

File: A095-704-688

December 3, 2013

In the Matter of

SUNG PAN LIU

RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGES: INA Section 212(a)(2)(A)(i)(I) - an alien who has been convicted of or who admits having committed or who admits committing acts which constitute the essential elements of a crime involving moral turpitude; and Section 212(a)(6)(C)(i) of the Immigration and Nationality Act, as amended - in that you are an alien who by fraud or willfully misrepresenting a material fact seeks to procure a visa, other documentation or admission into the United States or other benefit provided under this Act.

APPLICATION: Respondent's motion to terminate.

ON BEHALF OF RESPONDENT: R. WAYNE MCMILLEN, Attorney at Law

ON BEHALF OF DHS: REBECCA R. STERN

DECISION AND ORDER OF THE IMMIGRATION JUDGE

The respondent was placed in removal proceedings through the filing of a Notice to Appear filed with the Court on January 13, 2010. See Exhibit 1. The Notice to Appear charges the respondent as an arriving alien. Allegation 1 and 2 read as follows: You are not a citizen or national of the United States of America, you are a native of

Taiwan and a citizen of Taiwan. The respondent admitted allegations 1 and 2.

Allegation 3 states as follows: On or about September 7, 2004, you were convicted in the Taiwan High Court Teichung Branch for the offense of breach of trust. For this offense you were sentenced to four years of imprisonment. The respondent denied allegation 3. Allegation 4 states as follows: On or about November 22, 2004, you did not disclose the conviction by the Taiwan High Court on September 7, 2004 on your application to register permanent residence or adjust status. The respondent denied allegation 4. Allegation 5 states that: On or about July 5, 2005, you were accorded lawful permanent resident status in the United States. The respondent admitted allegation 5. Allegation 6 states as follows: On or about August 31, 2005, you did not disclose the conviction by the Taiwan High Court on September 7, 2004 on the record of sworn statement and affidavit form. The respondent denied allegation 6.

Allegation 7 states as follows: On or about April 25, 2009, you arrived at Los Angeles International Airport, Los Angeles, California, and applied for admission to the United States as a lawful permanent resident. The respondent admitted to the arrival portion of that allegation, however, denied seeking admission to the United States as a lawful permanent resident portion of allegation 7. The respondent denied both charges under INA Section 212(a)(2)(A)(i)(I) and the charge under Section 212(a)(6)(C)(i).

The Court has considered the following documents: Exhibit 1 is the Notice to Appear. Exhibit 2 is the Department's filing of the Form I-485 and Form I-181. Exhibit 3 is the Department's submission of record of sworn statement dated August 31, 2005. Exhibit 4 is a submission by the Department of Homeland Security received in court on July 26, 2010 regarding criminal judgment original including a translation, the first page of which is dated September 7, 2004, consisting of pages 1 through 26. Exhibit 5 is respondent's submission of court records regarding appeal. Exhibit 6 is the

respondent's submission of further conviction documents attached to respondent's motion to terminate proceedings, the first page of which indicates a dispatch date of July 27, 2005. Exhibit 7 is respondent's filing of current status of appeal dated December 2, 2013.

The Court has considered all of the documents in Exhibits 1 through 7. Both parties have indicated that there is no further evidence to submit at this time and, therefore, the Court will make a ruling regarding respondent's removability under INA Section 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i). The issue is whether respondent has been convicted for the offense of breach of trust and whether the respondent failed to disclose such conviction on his application to register permanent residence and a later sworn statement.

The Court finds that based on the information contained in Exhibit 4 and Exhibit 6, respondent's judgment of conviction was revoked. Referring to Exhibit 6, page 2, which is dated July 25, 2005, the Court reads a portion of that page, which reads as follows, in part: The final judgment of a case of offense of breach of trust for the above listed defendant has been made by Teichung Branch Court of Taiwan High Court on September 7, 2004; however, I, prosecutor general, consider that such judgment violated relevant laws and decrees and extraordinary appeal shall be filed. The holding of the court judgment and the grounds for extraordinary appeal are now listed hereunder. Holding of the court judgment, the previous judgment shall be revoked.

The Court notes that the documents at Exhibit 6 are dated after the date of the conviction documents filed by the Department at Exhibit 4, as they are dated July 25, 2005. Therefore, because it appears to the Court that the respondent's judgment is revoked, the Court cannot find that a conviction at this time exists for the offense of breach of trust.

In Planes v. Holder, 652 F.3d 991 (9th Cir. 2011), the Ninth Circuit found that conviction for purposes of the Immigration and Nationality Act exists once the district court enters judgment appeals notwithstanding the availability of an appeal as a right.

Therefore, since the Court finds that at this point there is no judgment of guilt since the conviction documents at Exhibit 6 indicate previous judgment is revoked, the Court cannot find that a conviction exists and therefore the Court cannot sustain allegations 3, 4, 6 or 7.

The Court, further, cannot sustain the charges of removability under INA Sections 212(a)(2)(A)(i)(I) and 212(a)(6)(C)(i), and the Court finds that the Government has not met its burden in establishing these two grounds of inadmissibility and, therefore, the Court grants the respondent's motion to terminate proceedings at this time.

ARLENE E. DORFMAN
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE ARLENE E.
DORFMAN, in the matter of:

SUNG PAN LIU

A095-704-688

LOS ANGELES, CALIFORNIA

was held as herein appears, and that this is the original transcript thereof for the file of
the Executive Office for Immigration Review.



SHEILA S. ZAKIELARZ (Transcriber)

FREE STATE REPORTING, Inc.-2

MARCH 11, 2014

(Completion Date)