APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 11-14487
Non-Argument Calendar

D.C. Docket No. 1:10-cv-22580-MGC

HONG HUANG, a.k.a. Linda Huang
Plaintiff – Appellant

versus

SECRETARY US DEPARTMENT OF HOMELAND SECURITY, DIRECTOR OF THE US CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY
Defendants - Appellants

Appeal from the United States District Court for the Southern District of Florida

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(April 6, 2012)

Before TJOFLAT, EDMONDSON and FAR, Circuit Judges.

PER CURIAM:

Hong Huang appeals the dismissal of her action seeking review of the denial of her naturalization application under INA § 310(c), 8 U.S.C. § 1421(c), and the denial of her motion for reconsideration. On appeal, she argues that the district court did have jurisdiction under § 1421 (c), even though she has not yet had an immigration hearing. For the reasons set forth below, we affirm the district court's dismissal of Huang's action and denial of her motion for reconsideration.

I.

Huang, a native of China, has been residing in the United States since 1998. She became a permanent resident in 2004, and she filed an N-400 Application for Naturalization in 2009. In 2010, the United States Citizenship and Immigration Services ("USCIS") denied Huang's naturalization application and simultaneously initiated removal proceedings. Huang has since appealed the denial of her naturalization application, but the USCIS has yet to rule on that appeal.

Huang then filed a complaint in the district court against Janet Napolitano, in her official capacity as the Secretary of the Department of Homeland Security, and Michael Aytes, in his official capacity as the Acting Director of the USCIS.[1] She asserted that

[1] Napolitano and Aytes are hereinafter referred to as "the government."

she had exhausted her administrative remedies because, pursuant to INA § 318, 8 U.S.C. § 1429, the USCIS could not review the denial of her naturalization application. Huang asked the court to conduct a de novo review of the denial of her naturalization application. She sought a declaration that she was eligible for naturalization, asserted that the government violated the Administrative Procedure Act, and sought a preliminary injunction to stay the removal proceedings while her case was pending before the district court.

The government filed a motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief could be granted. First, the government argued that the court lacked subject matter jurisdiction because § 1421(c) restricted judicial review of the denial of a naturalization application to applicants who had had an immigration hearing. Thus, Huang was required in this manner to exhaust her administrative remedies, even though Huang argued that exhaustion was futile because the USCIS did not have the authority to consider her administrative appeal while her removal proceedings were pending. The government argued that the exhaustion requirement was statutory rather than judicial and as such could not be waived for discretionary reasons. Second, the government argued that, even if the court had subject matter jurisdiction, Huang failed to state a claim because, under § 1429, a district court could not consider a naturalization application while removal proceedings were pending. Finally, under § 1429, neither the court nor the USCIS

could grant Huang's naturalization application while she was in removal proceedings.

In response, Huang argued that the district court did have subject matter jurisdiction under § 1421(c). That section implied that an immigration hearing would be available and that, if a hearing was unavailable, exhaustion was not required. No immigration hearing was available to Huang because the USCIS initiated removal proceedings the same day it denied her application for naturalization. The government replied that the court could not create exceptions to a statutory exhaustion requirement.

The district court first determined that, under § 1421(c), it lacked jurisdiction over Huang's case because she had not yet attended an immigration hearing to review the denial of her naturalization application. Thus, she had not exhausted her administrative remedies. Even if, under § 1429, it would be futile for Huang to attempt to exhaust her administrative remedies, the court could not ignore § 142l(c)'s exhaustion requirement. The court then found that it did not have jurisdiction under the Administrative Procedure Act or the Declaratory Judgment Act. The court declined to consider whether Huang had stated a claim, granted the motion to dismiss, and dismissed the case.

Huang filed a motion to reconsider, arguing that the court applied the wrong law in granting the motion to dismiss and that she was not required to exhaust her administrative remedies. In response, the government reiterated its argument that the court

could not create an exception to the exhaustion requirement contained in § 1421(c). Huang, in reply, reiterated her argument that she should not be required to exhaust her administrative remedies because it would be futile. The court denied the motion to reconsider, noting that Huang had not asserted any new arguments or brought to the court's attention any new legal authority regarding exhaustion.

II.

We review the grant of a motion to dismiss for lack of subject matter jurisdiction de novo. *Sinaltrainal v. Coca-Cola Co*., 578 F.3d 1252, 1260 (11th Cir. 2009). "We review the denial of a motion for reconsideration for abuse of discretion." *Equity Inv. Partners, LP v. Lenz*, 594 F.3d 1338, 1342 (11th Cir. 2010).

An individual whose naturalization application has been denied may seek review of that denial in a United States district court "after a hearing before an immigration officer under [INA § 336(a), 8 U.S.C. § 1447(a)]." INA § 310(c), 8 U.S.C. § 1421(c). Courts are not to read "futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise." *Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001) (interpreting Prison Litigation Reform Act of 1995).

The district court correctly determined that it

lacked jurisdiction over Huang's case.[2] Congress explicitly allows district court review of the denial of a naturalization application only where the applicant has received an immigration hearing under § 1447(a). *See* 8 U.S.C. § 1421(c). This restriction is a statutory exhaustion requirement, and the district court was not authorized to read an exception, including one based on futility or the USCIS's actions, into that requirement. *See Booth*, 532 U.S. at 741 n.6. Because Huang has not yet received an immigration hearing under § 1447(a), the district court lacked jurisdiction to review the denial of her naturalization application. Moreover, the district court did not abuse its discretion in denying Huang's motion for reconsideration because the court correctly determined in the first instance that it lacked jurisdiction under § 1421(c). Because the court correctly determined that it lacked jurisdiction under § 1421(c), we do not consider whether Huang stated a claim upon which relief could be granted.

For the foregoing reasons, we affirm the district court's dismissal of Huang's action and denial of her motion for reconsideration.

AFFIRMED.

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[2] Huang has abandoned any argument as to the district court's rulings regarding the Administrative Procedure Act and the Declaratory Judgment Act because she does not address those rulings on appeal. *See Lapaix v. US. Att'y Gen.*, 605 F.3d 1138, 1145 (11th Cir. 2010) ("Generally, when an appellant fails to offer argument on an issue, that issue is deemed abandoned.").

APPENDIX B

UNITED STATES DISTRICT COURT
SOURTHERN DISTRICT OF FLORIDA

Case No.: 10-22580-Civ-COOKE-BANDSTRA

Hong HUANG, Plaintiff,

v.

Janet NAPOLITANO, *et al.*, Defendants.

ORDER DISMISSING COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

THIS MATTER is before me upon Defendants' Motion to Dismiss and Memorandum of Law. (ECF No. 25). I have reviewed the motion, Plaintiff's Memorandum in Opposition (ECF No. 39), Defendants' Reply (ECF No. 41), and pertinent authority. Defendants argue that Plaintiff's Complaint should be dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1), and for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

I. Introduction

Plaintiff Hong Huang, a.k.a., Linda Huang, a citizen of China, filed an application for naturalization (Form N-400) on January 27, 2009, pursuant to INA § 316(a), 8 U.S.C. § 1427(a). Huang subsequently

appeared for interviews in connection with her application. On March 8, 2010, the U.S. Citizenship and Immigration Services ("USCIS") denied Huang's N-400 application and issued her a Notice to Appear, initiating removal proceedings against her. The removal proceedings are pending. On April 6, 2010, Huang filed an administrative appeal of the denial of her N-400 application pursuant to 8 U.S.C. § 1447(a). This appeal is pending. On May 10, 2010, Huang filed a complaint for de novo review of the USCIS's denial of her N-400 application pursuant to INA § 310 (c), 8 U.S.C. § 1421(c), for a declaratory judgment that she is eligible for naturalization, for relief of violations of the Administrative Procedures Act ("APA"), 5 U.S.C. § 706, and for a preliminary injunction staying removal proceedings pending the district court's de novo review of her N-400 application.

II. Legal Standards

A. Motion to Dismiss – Fed. R. Civ. P. 12(b)(1)

A district court is powerless to hear a matter where subject matter jurisdiction is lacking. *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974-75 (11th Cir. 2005) (noting that lower federal courts are courts of limited jurisdiction) (citing to *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999)). A plaintiff bears the burden of establishing subject matter jurisdiction. *Sweet Pea Marine, Ltd., v. APJ Marine, Inc.*, 411 F.3d 1242, 1248 n.2 (11th Cir. 2005). A defendant bringing a motion to dismiss under Fed. R. Civ. P. 12(b)(1), may assert a "facial attack" to jurisdiction whereupon the court will look to the

complaint to determine whether the plaintiff has sufficiently alleged subject matter jurisdiction. *Lawrence v. Dumbar*, 919 F.2d 1525, 1528-29 (11th Cir. 1990). "On a facial attack, a plaintiff is afforded safeguards similar to those provided in opposing a Rule 12(b)(6) motion – the court must consider the allegations of the complaint to be true." *Id*. at 1529. A defendant may also bring a "factual attack" challenging "'the existence of subject matter jurisdiction in fact, irrespective of the pleadings . . . .'" *Id*. (quoting *Menchaca v. Chrysler Credit Corp*., 613 F.2d 507, 511 (5th Cir. 1980), cert. denied, 449 U.S. 953 (1980)). In contrast to a facial attack, when a factual attack is brought "the trial court may proceed as it never could under 12(b)(6) or Fed. R. Civ. P. 56[,]" by examining and weighing evidence related to the court's subject matter jurisdiction – its authority to hear the case – and giving no presumptiveness of truth to the plaintiff's allegations. *Id*. (quoting *Williamson v. Tucker*, 645 F.2d 404, 412 (5th Cir.) (1981), cert. denied, 454 U.S. 897 (1981)).

B. Motion to Dismiss – Fed. R. Civ. P. 12(b)(6)

When considering a motion to dismiss, filed under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the court must accept all of the plaintiff's allegations as true and construe them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008). A court's consideration, when ruling on a motion to dismiss, is limited to the claims and any incorporated exhibits. *See Grossman v.*

Nationsbank, N.A., 225 F.3d 1228, 1231 (11th Cir. 2000).

"A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A plaintiff must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (abrogating *Conley v. Gibson*, 355 U.S. 41 (1957)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Detailed factual allegations are not required, but a pleading "that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id*. at 1949 (quoting *Twombly*, 550 U.S. at 555). "[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss." *Id*. at 1950.

III. Discussion

A. This Court Lacks Jurisdiction under 8 U.S.C. 1421(c)

Section 1421(c) provides that "[a] person whose application for naturalization . . . is denied, after a hearing before an immigration officer under section 1447(a) of this Title, may seek review of such denial before the United States district court . . . ." (emphasis added). Section 1447(a) provides that an applicant for naturalization may request a hearing before an

immigration officer upon denial of such application. Huang filed an appeal requesting a hearing before the immigration officer on the denial of her N-400 application. Because Huang has not yet attended this hearing, she has not fully exhausted her administrative remedies.

Huang argues that, notwithstanding the exhaustion requirement clearly set forth in section 1421(c), she need not exhaust her administrative remedies in this case because it would be futile to do so. In support of this argument, Huang points to the fact that USCIS lacks the authority to review her naturalization application while removal proceedings are pending. *See* 8 U.S.C. § 1429. A court, however, "will not read futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise." *Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001); *see also Weinberger v. Salfi*, 422 U.S. 749, 766 (1975) (holding that a mandatory statutory exhaustion requirement "may not be dispensed with merely by a judicial conclusion of futility").

Here, Congress has specifically mandated by statute that a person seeking review of the denial of a naturalization application must submit to "a hearing before an immigration officer under section 1447(a)" before she may seek de novo review in a federal district court. 8 U.S.C. § 1421(c). "[S]tatutorily created exhaustion requirements bind the parties and the courts. When a statute requires exhaustion, a petitioner's failure to do so deprives [a court] of jurisdiction." *Richardson v. Reno*, 162 F.3d 1338, 1374

(11th Cir. 1998), *judgment vacated on other grounds*, 526 U.S. 1142, 119 S. Ct. 2016, 143 L. Ed. 2d 1029.

Huang does not dispute that she has not fully complied with the statutory exhaustion requirements. In order to seek de novo review in a federal district court, she is therefore required to attend a hearing before the immigration officer as prescribed by statute.

B. This Court Lacks Jurisdiction under the APA

Huang also asserts jurisdiction under the APA. Huang provides a citation only to 5 U.S.C. § 706, which governs the scope of judicial review, whereas 5 U.S.C. § 704 specifies the types of actions over which a federal district court has jurisdiction. Federal jurisdiction is lacking when the administrative action is not "final" within the meaning of 5 U.S.C. § 704. *Fenin v. U.S. Dep't of Veterans Affairs*, 572 F.3d 868, 877 (11th Cir. 2009). Section 704 provides that "agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review." 5 U.S.C. § 704. For an agency action to be considered final it must: (1) "mark the consummation of the agency's decision making process-it must not be of a merely tentative or interlocutory nature"; and (2) "be one by which rights or obligations have been determined, or from which legal consequences will flow." *Fenin*, 572 F.3d at 877.

The USCIS's denial of Huang's naturalization application does not amount to a "consummation of the

agency's decision making process" from which any legal consequences will flow. Huang has filed an appeal pursuant to Section 1447(a) requesting a hearing before an immigration officer to review the denial of her naturalization application. This appeal is currently pending. Additionally, the USCIS has initiated removal proceedings against Huang. The USCIS has not yet reached any decision regarding removal. A final agency action would result only upon the conclusion of Huang's administrative appeal or removal proceeding. At that point, she would be free to file another complaint seeking declaratory, injunctive, or any other available relief.

C. The Declaratory Judgment Act does not Provide an Independent Basis for Jurisdiction

Finally, Huang asserts jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202. The Declaratory Judgment Act, however, does not provide an independent basis for a federal court to exercise subject matter jurisdiction. *Stuart Weitzman, LLC v. Microcomputer Resources, Inc*., 542 F.3d 859, 861-62 (11th Cir. 2008) ("[I]t is well-established that the Declaratory Judgment Act does not, of itself, confer jurisdiction upon federal courts."). Because there is no federal question ripe for review at this time, the Declaratory Judgment Act cannot save this complaint.

III. Conclusion

For the foregoing reasons, this Court does not have subject matter jurisdiction to consider this complaint. Because this Court lacks subject matter

jurisdiction, I need not reach the separate question of whether Plaintiff's complaint fails to state a claim upon which relief can be granted.

Accordingly, it is **ORDERED** and **ADJUDGED** that:

1. The Defendants' Motion to Dismiss and Memorandum of Law (ECF No. 25) is **GRANTED**.

2. The Plaintiff's Complaint for De Novo Review of Naturalization Denial, Declaratory Judgment, and Other Relief (ECF No. 1) is **DISMISSED** for lack of subject matter jurisdiction.

3. The Clerk is directed to **CLOSE** this case.

DONE and ORDERED in chambers, at Miami, Florida, this 28th day of February 2011.

/s/ Marcia G. Cooke

MARCIA G. COOKE

United States District Judge

Copies furnished to:

The Hon. Ted E. Bandstra

Counsel of Record

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 11-14487-FF

HONG HUANG, a.k.a. Linda Huang
Plaintiff – Appellant

versus

SECRETARY US DEPARTMENT OF HOMELAND SECURITY, DIRECTOR OF THE US CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY

Defendants – Appellees.

Appeal from the United States District Court for the Southern District of Florida

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FILED U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 18 2012

John Ley- Clerk

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

BEFORE: TJOFLAT, EMONDSON and FAY, Circuit Judges

PER CURIAM:

The petition for rehearing is DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Peter Fay

UNITED STATES CIRCUIT JUDGE

ORD-42

APPENDIX D

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF FLORIDA

Case No.: 10-22580-Civ-COOKE-BANDSTRA

HONG HUANG,
Plaintiff

vs.

JANET NAPOLITANO, *et al.*,
Defendants.
/

ORDER DENYING MOTION FOR RECONSIDERATION

THIS MATTER is before me upon Plaintiff's Motion for Reconsideration. (ECF No. 59). I have reviewed the arguments, the record, and the relevant legal authority. For the reasons provided in this Order, the Plaintiff's Motion for Reconsideration is denied.

I. BACKGROUND

Plaintiff Hong Huang, a.k.a., Linda Huang, a citizen of China, filed an application for naturalization

(Form N-400) on January 27, 2009, pursuant to INA § 316(a), 8 U.S.C. § 1427(a). On March 8, 2010, the U.S. Citizenship and Immigration Services ("USCIS") denied Ms. Huang's N-400 application and issued her a Notice to Appear, initiating removal proceedings against her. The removal proceedings are pending. On April 6, 2010, Ms. Huang filed an administrative appeal of the denial of her N-400 application pursuant to 8 U.S.C. § 1447(a). This appeal is pending. On May 10, 2010, Ms. Huang filed a complaint for de novo review of the USCIS's denial of her N-400 application pursuant to INA § 310(c), 8 U.S.C. § 1421(c), for a declaratory judgment that she is eligible for naturalization, for relief of violations of the Administrative Procedures Act ("APA"), 5 U.S.C. § 706, and for a preliminary injunction staying removal proceedings pending the district court's de novo review of her N-400 application. (ECF No. 1). On February 28, 2011, I entered an Order dismissing Ms. Huang's Complaint for lack of subject matter jurisdiction (ECF No. 58) because she failed to exhaust her administrative remedies. Plaintiff now requests reconsideration of that Order.

II. LEGAL STANDARDS

The "purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." *Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1369 (S.D. Fla. 2002). "A motion for reconsideration should not be used as a vehicle to present authorities available at the time of the first decision or to reiterate

arguments previously made." *Id*. To prevail on a motion for reconsideration, a party generally must present at least one of "three major grounds which justify reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice." *Id*. "[T]he moving party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Id*.

III. ANALYSIS

Ms. Huang argues that I should vacate my Order because it is based on three errors of law: (i) this Court has subject matter jurisdiction; (ii) no exhaustion requirement applies, or exhaustion is futile; and (iii) Ms. Huang may not be able to file another complaint after removal proceedings conclude.

First, Ms. Huang argues that the decision in *Kestelboym v. Chertoff*, 538 F. Supp. 2d 813 (D.N.J. 2008), indicates that this Court has subject matter jurisdiction over her claims. At the outset, I note that a decision of another district court is not binding precedent upon this Court, *Camreta v. Greene*, 131 S. Ct. 2020, 2033 n.7 (2011), and this case was available at the time I entered the Order of dismissal. Moreover, the authority Ms. Huang cites does not justify reconsideration here.

In *Kestelboym*, a plaintiff filed a complaint in the U.S. District Court for the District of New Jersey after the USCIS denied her application for naturalization and denied her request for a hearing. 538 F. Supp. 2d

at 814. When the plaintiff filed her complaint in district court, the USCIS had initiated removal proceedings against her. *Id*. at 815. The court noted that there is a circuit split on the issue of whether a district court has jurisdiction over a complaint where, as here, the USCIS denies a petitioner's naturalization application and initiates removal proceedings on the same grounds as the denial of the application. *Id*. at 816. After reviewing different circuits' approaches to this issue, the district court held that it had subject matter jurisdiction over the plaintiff's complaint. *Id*. at 818. Specifically, the district court found that 8 U.S.C. § 1421[3] and 8 U.S.C. § 1429[4] do not preclude a district court from reviewing the administrative denial of a naturalization application while a removing proceeding is pending. *Id*.

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[3] Section 1421(c) provides, in relevant part, that "[a] person whose application for naturalization . . . is denied, after a hearing before an immigration officer under section 1447(a) of this Title, may seek review of such denial before the United States district court . . . ."

[4] Section 1429 provides, in relevant part, "no application for naturalization shall be considered by the Attorney General if there is pending against the applicant a removal proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act."

In *Karam v. U.S. Citizenship & Immigration Servs.*, 373 F. App'x 965 (11th Cir. 2010), the Eleventh Circuit – relying on the same legal principles that I relied upon in my Order – upheld a district court's decision that it lacked subject matter jurisdiction over a plaintiff's complaint because, as here, the plaintiff had not yet attended a hearing before an immigration officer on the denial of his naturalization application. The court held that the plaintiff failed to exhaust his administrative remedies pursuant to 8 U.S.C. § 1421(c), and therefore the district court lacked jurisdiction over the claim. Although *Karam* is not binding, it is persuasive authority, particularly where the facts are materially the same as those in the present case. *See Bonilla v. Baker Concrete Const., Inc.*, 487 F.3d 1340, 1345 n.7 (11th Cir. 2007). I find that my Order does not contain a material error of law with regard to the decision that this Court lacks subject matter jurisdiction. Ms. Huang's Motion for Reconsideration of this issue is denied.

Second, Ms. Huang argues that courts do not require exhaustion when to do so may result in undue prejudice. In my Order, I found:

> Here, Congress has specifically mandated by statute that a person seeking review of the denial of a naturalization application must submit to 'a hearing before an immigration officer under section 1447(a)' before she may seek de novo review in a federal district court. 8 U.S.C. § 1421(c). '[S]tatutorily created exhaustion requirements bind the parties and

> the courts. When a statute requires exhaustion, a petitioner's failure to do so deprives [a court] of jurisdiction.' *Richardson v. Reno*, 162 F.3d 1338, 1374 (11th Cir. 1998), *judgment vacated on other grounds*, 526 U.S. 1142, 119 S. Ct. 2016, 143 L. Ed. 2d 1029.

Order, p. 4. Ms. Huang fails to raise any new arguments or point to new legal authority that places in question this Court's reasoning in holding that Ms. Huang must exhaust her administrative remedies. I also note that in *Karam* the Eleventh Circuit similarly held that Section 1421(c) provides a statutory exhaustion requirement that binds the parties and the courts; failure to exhaust such a requirement deprives a court of jurisdiction. 373 F. App'x at 957-58. I find that my Order does not contain a material error of law with regard to the decision that Ms. Huang failed to exhaust her administrative remedies. Ms. Huang's Motion for Reconsideration of this issue is denied.

Finally, Ms. Huang argues that this Court made a legal error in noting that she could file another complaint after the conclusion of removal proceedings. Ms. Huang points out that if the immigration court decides to remove Ms. Huang, she may seek review of this decision before the Board of Immigration Appeals, and then the Eleventh Circuit. Whether or not Ms. Huang may file a new complaint does not alter this Court's ruling that it does not have subject matter jurisdiction, and therefore Ms. Huang's argument in this respect is not "of a strongly convincing nature to

induce the court to reverse its prior decision." *Burger King Corp*., 181 F. Supp. 2d at 1369.

Accordingly, it is **ORDERED** and **ADJUDGED** that Plaintiff's Motion for Reconsideration (ECF No. 59) is **DENIED**.

DONE and ORDERED in chambers, at Miami, Florida, this 29th day of July 2011.

/s/ Marcia G. Cooke

MARCIA G. COOKE

United States District Judge

Copies furnished to:

The Hon. Ted E. Bandstra

Counsel of Record

APPENDIX E

U.S. Department of Homeland Security
Miami Field Office
8801 NW 7th Avenue
Miami, Florida 33150

U.S. Citizenship and Immigration Services

March 8, 2010

Hong Huang
21200 N.E. 38th Avenue,
Apt. 2703
Aventura, FL 33180

Refer to: A97 126 258
NBC-000-059-404

DECISION

On January 14, 2010, you appeared for a re-examination of your application for naturalization, which was filed in accordance with Section 316(a) of the Immigration and Nationality Act:

Pursuant to the investigation and the examination of your application it is determined that you are ineligible for naturalization for the following reason(s):

See Attachment (s)

If you desire to request a review hearing on this decision pursuant to Section 336(a) of the Act, **you must file a request for a hearing <u>within 30 Days</u> of the date of this notice**. If no request for hearing is filed within the time allowed, this decision is final. A request for hearing may be made to the District Director, with the Immigration and Naturalization office which made the decision, on Form N-336, **Request for Hearing on a Decision in Naturalization Proceedings under Section 336 of the Act, together with the appropriate fee**. A brief or other written statement in support of your request may be submitted with the Request for Hearing.

Sincerely,

/s/ Allana Ow

Allan Ow

Field Office Director

cc: Minzhi Zhou, Esq.

Prepared by: S. Mateo, DAO

Form N-335

ATTACHMENT TO FORM N-335

Applicant: Hong Huang

Application for Naturalization, Form N-400

Alien Number: A97 126 258

Application ID: NBC-000-059-404

Your application is hereby denied for the following reasons:

Section 316(a) of the INA [8 U.S.C. § 1427] states in pertinent part, no person, except as otherwise provided in this title, shall be naturalized, unless such applicant . . . (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

Section 101(f) of the INA [8 U.S.C. § 1101] states in pertinent part, for the purpose of this Act – No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was – . . . (6) one who has given false testimony for the purpose of obtaining any benefits under this Act.

Section 318 of the INA [8 U.S.C. § 1429] provides that no person shall be naturalized unless he has been lawfully admitted to the United States for permanent

residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that he or she entered the United States lawfully.

Section 212(a)(6)(C)(i) of the Act, as amended, states in pertinent part that an alien who by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act, is inadmissible.

Section 212(a)(7)(A)(i)(I) of the Act, as amended states in pertinent part that any immigrant at the time of application for admission who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General under section 211(a) is inadmissible.

Section 201(b) of the Act states, in part:

> The "immediate relatives" referred to in subsection (a) of this section shall mean the children, spouses, and parents of a citizen of the United States: . . . The immediate relatives specified in this subsection who are otherwise qualified for admission as immigrants shall be admitted as such, without regard to the numerical limitations of this Act.

8 C.F.R. 204.2(a)(2) states, in part:

> *Evidence for petition for a spouse*. A petition submitted on behalf of a spouse must be accompanied by . . . proof of the legal termination of all previous marriages of both the petitioner and the beneficiary.

In *Matter of Weaver*, 16 I&N Dec. 730 (BIA 1979), the Board of Immigration Appeals held that the validity of a divorce entered into while neither party to it is domiciled in the place where it was granted, but where both parties appeared for the divorce, should be judged by the law of the jurisdiction where the parties to the divorce were domiciled at the time of the divorce. The Board stated at page 732 of the decision:

> "Since the place where the parties to the divorce were domiciled at the time of the divorce was the only place with an interest in the proceedings at that time, the parties should be able to rely on the law of that state, even if they move to another jurisdiction.."

In *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983), the Board again addressed the validity of foreign divorces for immigration purposes. Citing 24 Am.Jur.2nd, *Divorce and Separation*, sections 964-65 (1966); Annot., 13 A.L.R.3d 1419 (1967), the Board's decision reads at pages 2 and 3:

> A foreign court must have jurisdiction to render a valid decree, and the applicable tests of jurisdiction are ordinarily those of the United States, rather than of the divorcing country, and a divorce obtained in a foreign country will not normally be recognized as valid if neither of the spouses had a domicile in that country, even though domicile is not a requirement for jurisdiction under the divorcing country's laws.

Citing various Federal and state court decisions, the Board's decision in *Luna* reads at page 3:

> The domicile of the parties has long been recognized as the primary, if not the exclusive, basis for the judicial power to grant a divorce.

The leading Florida case on the validity of foreign divorces in the State of Florida is *In Re Estate Of Schorr*, Fla. App., 409 So.2nd 487. In this case, the District Court of Appeal of Florida, Fourth District, held as follows at page 489:

> States are not required to give full faith and credit to divorces rendered in foreign nations. Whether a state will give force and effect to a foreign divorce decree is solely a question of comity. *Parker v. Parker*, 155 Fla. 635, 21 So.2nd 141 (1945), cert. denied, 326 U.S. 718, 66 S. Ct. 23, 90 L.Ed. 425 (1945); *Schwartz v. Schwartz*, 143 So.2nd 901 (Fla.2nd DCA 1962). To actuate the doctrine of judicial comity a foreign judgment must partake of the elements which would support it if procured in this country. For example, the grounds relied upon must be sufficient under Florida law and the petitioning party must satisfy the jurisdictional requirements relating to domicile. *Pawley v. Pawley*, 46 So.2nd 464 (Fla.), *cert denied*, 340 U.S. 866, 71 S. Ct. 90, 95 L.Ed. 632 (1950); *Kittel v. Kittel*, I 94 So.2nd 640 (Fla.3d DCA 1967); cert discharged, 210 So.2nd 1 (Fla. 1967). Annot., 13 A.L.R.3d 1419 (1967). It has long been held that Florida courts will not recognize a foreign nation's divorce decree unless at least one of the spouses was a good faith domiciliary of the foreign nation at the time the decree was rendered. 26 Fla.Jur.2d *Family Law*, Section 798 (1981), *Schwartz v. Schwartz*, *supra*; *accord*, *Williams v. North Carolina*, 325 U.S. 226, 65 S. Ct. 1092, 89 L.Ed. 1577 (1945).

In visa petition proceedings, the burden of proof rests with the petitioner. *Matter of Brantigan*, 11 I&N Dec.

493 (BIA 1966). Further, when there is reason to doubt the bona fides of the marital relationship, the petitioner must present evidence to show that the marriage was not entered into solely for the purpose of circumventing the immigration laws of the United States. *Matter of Laureano*. *supra*. That evidence could take many forms, including, but not limited to, proof that the beneficiary is listed as the petitioner's spouse on any insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experience. *Matter of Phillis*, *supra*.

Title 8 Code of Federal Regulations Section(s) listed below:

Reason:	Poor Moral Character (False Testimony, Lying)
8 CFR Reference:	Part 316 General Requirements for Naturalization
	Section 316.10 Good Moral Character

8 CFR § 316.2 Eligibility:

a) General. Except as otherwise provided in this chapter, to be eligible for naturalization, an alien must establish that he or she:

2) Has been lawfully admitted as a permanent resident of the United States;

7) For all relevant time periods under this paragraph, has been and continues to be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States;

b) Burden of proof. The applicant shall bear the burden of establishing by a preponderance of the evidence that he or she meets all of the the requirements for naturalization, including that the applicant was lawfully admitted as a permanent resident of the United States, in accordance with the immigration laws in effect at the time of the applicant's initial entry or any subsequent reentry.

Section 316.10 states:

a) Requirement of good moral character during the statutory period.

1) An applicant for naturalization bears the burden of demonstrating that, during the statutorily prescribed period; he or she has been and continues to be a person of good moral character. This includes the period between the examination and the administration of the oath of allegiance.

2) In accordance with Section 101(f) of the Act, the Service shall evaluate claims of good moral character on a case-by-case basis taking into account the elements enumerated in this section and the standards of the average citizen

in the community of residence. The Service is not limited to reviewing the applicant's conduct during the five years immediately preceding the filing of the application, but may take into consideration, as a basis for its determination, the applicant's conduct and acts at any time prior to that period, if the conduct of the applicant during the statutory period does not reflect that there has been reform of character from an earlier period or if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character.

b) Finding of a lack of good moral character.

2) An applicant shall be found to lack good moral character if during the statutory period the applicant:

vi) Has given false testimony to obtain any benefit from the Act, if the testimony was made under oath or affirmation and with an intent to obtain an immigration benefit; this prohibition applies regardless of whether the information provided in the false testimony was material, in the sense that if given truthfully it would have rendered ineligible for benefits either the applicant or the person on whose behalf the applicant sought the benefit;

EXPLANATION

The record of proceedings reflects the following facts:

- You were married in China to Ye Jun HE (also known as Wei CHEN) on or about January 18, 1998;

- You were admitted to the United States on or about May 16, 1998, as a Visitor for Business (B1) at the Los Angeles, California port of entry, with authorization to remain in the United States until August 15, 1998;

- On January 19, 2000, you divorced Ye Jun HE and said divorce took place in China while you and Ye Jun HE were residing permanently in the state of California in the United States;

- On January 21, 2003, you married Zhi Wei WU at Miami, FL;

- On January 30, 2003, Zhi Wei WU filed a petition for Alien Relative (Form I-130 MIA-03-122-00198) on your behalf;

- On January 30, 2003, you filed an Application to Register Permanent Resident or Adjust Status (Form 1-485 MIA-03-122-00196) based on your marriage to Zhi Wei WU, a United States citizen;

- On April 1, 2004, your Application to Register Permanent Resident or Adjust Status (Form 1-485 MIA-03-122-00196) was approved by the Miami Field Office;

- On December 22, 2004, you, Zhi Wei WU and Ye Jun HE secured a mortgage (1000157-0004597806-7) for the amount of two hundred forty thousand dollars (US$240,000.00) which the three of you used to purchase 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180;

    - Please note that 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180 is your current place of residence which you share with Ye Jun HE, your ex-husband and current boyfriend, and Ruby HE, your daughter;

- On December 22, 2004, you, Zhi Wei WU and Ye Jun HE secured a mortgage (1000157-0004536009-2) for the amount of eight hundred forty thousand dollars (US$840,000.00) which the three of you used to purchase 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180;

    - Please note that 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180 is your current place of residence which you share with Ye Jun HE, your ex-husband and current boyfriend, and Ruby HE, your daughter;

- On December 22, 2004, you, Zhi Wei WU and Ye Jun HE purchased 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180;

    - Please note that 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180 is your

current place of residence which you share with Ye Jun HE, your ex-husband and current boyfriend, and Ruby HE, your daughter;

- On January 27, 2009, you tiled an Application for Naturalization (Form N-400) with the Service;
- On September 22, 2009, you appeared at the USC IS Miami Field Office for an interview in connection with your N-400 application;
- On January 14, 2010, you appeared again at the USCIS Miami Field Office for a re-examination interview in connection with your N-400 application in which an officer of this Department addressed issues related to your ineligibility for adjustment of status based on your invalid divorce to Ye Jun HE and the Service's concern related to the possibility that you may have entered into a sham marriage with Zhi Wei WU for the sole purpose of circumventing the immigration laws of the United States. During the interview that took place on January 14, 2010, you provided the Service with the following sworn testimony:

1) You testified that you co-own 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180 with Wei CHEN (also known as Ye Jun HE);

    a. USCIS wants to point out that Ye Jun HE is your ex-husband and father of your daughter;

2) You testified that you and Wei CHEN (also known as Ye Jun HE) purchased 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180 for one million two hundred thousand dollars ($1,200,000) and you paid a total of ten percent (10%) or one hundred and twenty thousand dollars ($120,000) towards the closing costs for that property. You also stated that you and Wei CHEN (also known as Ye Jun HE) paid the ten percent (10%) for the closing costs. At first you tried to hide as much information as you could about the identity of the third person who participated with you in the purchase process of 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180, but then your attorney interrupted you and asked you whether or not you and Ye Jun HE were the only persons who purchased that property. At that time the interviewing officer asked your attorney to accompany him outside so they could talk off the record and only after their return you decided to provide the Service with the name of the third person who purchased 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180 with you and Ye Jun HE. You then testified that Zhi Wei WU, your second husband, was the third person who purchased this property with you and Ye Jun HE;

    a. The Service wants to point out that at first you identified Wei CHEN as if he was a different person than Ye Jun HE and only after discussing who Wei CHEN was for some time you decided to identify him as

your first husband and father of your daughter;

3) You testified that Zhi Wei WU gave you sixty thousand dollars ($60,000) to help you with the closing costs of 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180;

4) You testified that Ye Jun HE gave you thirty thousand dollars ($30,000) to help you with the closing costs of 21200 N.E. 38th Avenue, Apt. 2703. Aventura, FL 33180;

5) You testified that you, your daughter and Wei CHEN (also known as Ye Jun HE) have been residing together for approximately three (3) years;

6) You testified that you married Ye Jun HE on January 18, 1998;

7) You testified that you divorced Ye Jun HE on January 19, 2000. You also stated that said divorce was filed and finalized in China while you and Ye Jun HE were residing permanently in the United States;

8) You testified that you married Zhi Wei WU in January of 2003 and the record of proceedings reflects that you married Zhi Wei WU on January 21, 2003 at Miami, Florida;

9) You were asked to state where Zhi Wei WU was working around the time the two of you met and around the time the two of you were dating. At

first you stated that Mr. WU was a real estate agent and after you were asked a second time you stated that he was self-employed and that he was working for Atlantic Real Estate. When the interviewing officer asked you whether or not Mr. WU was working for Atlantic Real Estate, you stated that Atlantic Real Estate belongs to Mr. WU;

a. The Service obtained information through law enforcement database queries that reflects the following:

i. Zhi Wei WU owned until September 26, 2003, Atlantic Holding Group, L.L.C.;

ii. Zhi Wei WU owns since September 10, 1998, Atlantic Realty & Investment Corporation;

10) You testified that you visited Zhi Wei WU at Atlantic Real Estate while he was working;

11) You testified that Zhi Wei WU had four (4) or five (5) employees working for him at Atlantic Real Estate in the year 2003;

12) You testified that Zhi Wei WU had four (4) or five (5) employees working for him at Atlantic Real Estate in the year 2004;

13) You testified that Zhi Wei WU had more employees working for him at Atlantic Real Estate

in the year 2005 than the amount of employees he had in the year 2004;

14) You testified that Atlantic Real Estate was the only place where Zhi Wei WU worked from the time you married him until the time the two of you divorced;

a. Please note that the record of proceedings contains an employment verification letter dated February 20, 2004 from Properties by Premier LLC., which states in pertinent part:

i. "This letter is certified that Mr. Zhi Wei Wu, Wu have been working in our real estate firm for the last 5 years.

Mr. Wu is a licensed real estate broke that handle sales and leasing transaction in Dade & Broward County and he is one of our Top producers of the company with the yearly income of $50,000.00 to $65,000.00"

b. Please note that you and Mr. WU provided the Service the above-referenced employment verification letter during the adjudication process of your 1-485. This document directly contradicts the statements you made on January 14, 2010 when you testified that Mr. WU only

worked for Atlantic Real Estate since the time you met him for the first time and until the time you divorced him;

c. Please note that the employment verification letter that you and Mr. WU submitted during the adjudication process of your 1-485 was issued and signed by Mr. WU's ex-wife, Slenda C. CHAN (also known as Chack Man CHAN);

d. Information obtained by the Service through public record queries revealed that Mr. WU's ex-wife, Slenda CHAN registered with the Florida State Department of Corporation a business named Properties by Premier LLC on March 31, 2003 and she used 17555 Collins Avenue, Apt. 1402. Sunny Isles Beach, FL 33160 as her business mailing address which was also the same address where Zhi Wei WU used to reside with Slenda CHAN and the address Mr. WU used to register his 2005 Porsche Cayenne on May 4, 2005 and his 1997 lnfiniti I30 on May 18, 2005;

e. Information obtained by the Service through public record queries revealed that Mr. WU's ex-wife, Slenda CHAN made changes to her business, Properties by Premier LLC on February 20, 2008 and among those changes she added Zhi Wei WU as a manager for Properties by Premier and she also changed the business's address to

15925 Biscayne Blvd. North Miami Beach, FL 33160. Please note that 15925 Biscayne Blvd. North Miami Beach, FL 33160 is also the address where Mr. WU has been operating Atlantic International Properties LLC from;

f. Please note that during the adjudication process of your I-485, neither you nor Mr. WU notified the Service that he owned a business named Atlantic Real Estate even though such information would be helpful to you during said proceedings;

15) You testified that you had and still have a life insurance policy. When the interviewing officer asked you whether or not Zhi Wei WU was the beneficiary of your life insurance policy, you stated that he never was the beneficiary; your daughter was;

16) You testified that Zhi Wei WU and Ye Jun HE met at the end of the year 2004, but you could not recall whether or not they met for the first time in November or December of 2004;

a. Please note that the interviewing officer showed you two (2) copies of two (2) mortgages that were secured by you, Zhi Wei WU and Ye Jun HE on December 22, 2004. The interviewing officer asked you to please explain how it is possible that your two (2) ex-husbands met at the end of the year 2004 and on December 22, 2004 the

three of you secured two (2) mortgages for the total amount of one million eighty thousand dollars ($1,080,000);

CONCLUSION

USCIS finds that your divorce to Ye Jun HE (also know as Wei CHEN) is not recognized by Florida laws as your divorce from Mr. HE took place in China and at the time said divorce was finalized you and Ye Jun HE were residing in the United States;

USCIS finds that you misrepresented a material fact on January 14, 2010, when at first you testified that you and Ye Jun HE were the only ones who purchased 21200 N.E. 38th Ave., Apt. 2703. Aventura, FL 33180 and only after your attorney interrupted your testimony you testified that Zhi Wei WU also joined you and Ye Jun HE during the purchase process of the aforementioned property;

USCIS finds that you misrepresented a material fact on January 14, 2010, when you testified that your first husband, Ye Jun HE and your second husband, Zhi Wei WU met for the first time by the end of the year 2004. This finding is supported by the fact that the Service obtained copies of two (2) mortgages through public record queries which revealed that on December 22, 2004, you, Ye Jun HE and Zhi Wei WU secured a mortgage for the total amount of one million eighty thousand dollars ($1,080,000);

USCIS finds that you misrepresented a material fact on January 14, 2010, when you testified that Zhi Wei

WU gave you sixty thousand dollars ($60,000) to help you pay for the closing costs of 21200 N.E. 38th Ave., Apt. 2703. Aventura, FL 33180;

USCIS finds that you misrepresented a material fact on January 14, 2010, when you testified that Ye Jun HE has been residing with you for the past three years (as a boyfriend);

USCIS finds that you misrepresented a material fact on January 14, 2010, when you testified that Zhi Wei WU moved out of your apartment in July of 2006. This finding is supported by the following:

- Information obtained by the Service through law enforcement database queries revealed that on April 22, 2003, Mr. WU joined by his ex-wife, Slenda CHAN (also known as Chak Man CHAN) registered with the Florida State Department of Motor Vehicles a 2000 4-Door Wagon Sport Utility Lexus RX 300 (VIN #: JT6GF10U1Y0065335) and they used 223 N.E. 211th Terrace Apt. 84, Miami, FL 33179 as her address and 17800 North Bay Road, Apt. 906, Sunny Isles Beach, FL 33160 as his address;

- Information obtained by the Service through law enforcement database queries revealed that on October 1, 2004, Mr. WU had utilities connected at 17555 Collins Ave. Apt. 1402, Sunny Isles Beach, FL 33160;

- Information obtained by the Service through law enforcement database queries revealed that

on February 7, 2005, Mr. WU leased from Porsche Leasing LTD a Blue 2005 4-door Wagon Sport Utility Porsche Cayenne (VIN #: WP1AA29P75LA23602) and he used 17555 Collins Ave. Apt. 1402, Sunny Isles Beach, FL 33160 as his address. Please note that this is the same address where Mr. WU resided with his ex-wife and the address Mr. WU's ex-wife used as the mailing address of her business, Properties by Premier;

- Information obtained by the Service through law enforcement database queries revealed that on May 4, 2005, Mr. WU registered with the Florida State Department of Motor Vehicles a Blue 2005 4-door Wagon Sport Utility Porsche Cayenne (VIN #: WPIAA29P75LA23602) and he used 17555 Collins Ave. Apt. 1402, Sunny Isles Beach, FL 33160 as his address. Please note that this is the same address where Mr. WU resided with his ex-wife and the address Mr. WU's ex-wife used as the mailing address of her business, Properties by Premier;

- Information obtained by the Service through law enforcement database queries revealed that on May 18, 2005, Mr. WU registered with the Florida State Department of Motor Vehicles a 4-door Sedan 1997 Infinity I30 (VIN #: JNKCA21D9VT513517) and he used 17555 Collins Ave. Apt. 1402, Sunny Isles Beach, FL 33160 as his address. Please note that this is the same address where Mr. WU resided with

his ex-wife and the address Mr. WU's ex-wife used as the mailing address of her business, Properties by Premier;

- Information obtained by the Service through public record queries revealed that on July 29, 2005, Mr. WU purchased 3885 N.E. 168th Street. North Miami Beach, FL 33160 for the amount of seven hundred seventy-five thousand five hundred and fifteen dollars ($775,515.00). Said queries also revealed that even though you were still married to Mr. WU, you were not included on the deed of said property as required by Florida laws;

- The record of proceedings contains a copy of a mortgage obtained by the Service through public record queries which reflects that on July 29, 2005, Zhi Wei WU secured a mortgage for the purchase of 3885 N.E. 168th Street. North Miami Beach, FL 33160 and he used 17555 Collins Ave. Apt. 1402, Sunny Isles Beach, FL 33160 as his address;

- Information obtained by the Service through law enforcement database queries revealed that during the purchase process of 3885 N.E. 168th Street. North Miami Beach, FL 33160 Mr. WU used 17555 Collins Ave. Apt. 1402, Sunny Isles Beach, FL 33160 as his address and said queries also revealed that at the time he was residing at that address with his ex-wife Chack Man Chan;

- Information obtained by the Service through law enforcement database queries revealed that on August 1, 2005, Mr. WU had utilities connected at 3885 N.E. 168th Street. North Miami Beach, FL 33160;

- Information obtained by the Service through Jaw enforcement database queries revealed that on June 27, 2006, Mr. WU registered with the Florida State Department of Motor Vehicles a 4-door Sedan 1997 Infinity I30 (VIN #: JNKCA21D9VT513517) and he used 3885 N.E. 168th Street. North Miami Beach, FL 33160 as his address;

USCIS finds that you misrepresented a material fact on January 14, 2010, when you testified that Mr. WU never told you about Properties by Premier when in fact the two of you submitted a letter of employment verification on company's letterhead from said business which was signed by Mr. WU's ex-wife, Slenda C. Chan (also known as Chack Man CHAN);

USCIS finds that you entered into a sham marriage with Zhi Wei WU with the sole purpose of circumventing the immigration laws of the United States as the record of proceedings clearly shows that you never resided with Zhi Wei WU as husband and wife under the same roof. Furthermore a copy of the divorce decree reflects that Zhi Wei WU filed for divorce and petitioned for a simplified dissolution of marriage even though there were properties purchased within the marriage;

Your statutory prescribed period for naturalization covers the five years immediately preceding the date of filing of your application (January 29, 2004 through January 29, 2009, and extends until the date of admission to citizenship);

USCIS finds that you are statutorily ineligible for naturalization because you failed to establish that you are a person of good moral character pursuant to the provisions of section 316(a) of the INA and 8 C.F.R. § 316.10.

Specifically, USCIS finds that you have given false testimony to obtain an immigration benefit when you falsely testified during the course of your interview on January 14, 2010 that Ye Jun HE and Zhi Wei WU met for the first time by the end of the year 2004. However, contrary to your testimony, the documentary evidence shows that Ye Jun HE and Zhi Wei WU had secured mortgages on December 22, 2004 and they used said mortgages to purchase the apartment where you and Ye Jun HE currently reside. This information clearly demonstrates that Ye Jun HE and Zhi Wei WU had a well-established relationship;

False testimony under oath for the purpose of obtaining an immigration benefit constitutes a bar to a finding of good moral character. *See* 8 C.F.R. § 316.10(b)(2)(vi). This is true even if the testimony is not material. *Id.; See also Kungys v. United States*, 485 U.S. 759 (1988). As a result of the foregoing, USCIS finds that you have failed to meet your burden of proof that you are a person of good moral character.

USCIS further finds that you are statutorily ineligible for naturalization based on your failure to have been lawfully admitted to the United States as a lawful permanent resident, as required by section 318 of the INA.

Indeed, the record shows that you were not legally divorced from Ye Jun HE at the time of your marriage to Zhi Wei WU, thus the qualifying marriage was not valid for immigration purposes. As a result, you were inadmissible to the United States pursuant to section 212(a)(7)(A)(i)(I) of the INA as an immigrant not in possession of a valid unexpired immigrant visa or other valid entry document as required by the INA.

On the basis of the foregoing, you have failed to establish by a preponderance of the evidence that you have met all the requirements for naturalization, in accordance with 8 C.F.R. §§ 316.2(a)(2), 316.2(a)(7), 316.2(b), 316.10(a), and 316.10(b)(2)(vi).

On the basis of the foregoing, and the lack of persuasive material evidence, it is concluded that you have not established that your marriage was not entered into for the primary purpose of circumventing the immigration laws of the United States. Therefore, it is USCIS decision that your Application for Naturalization (Form N-400) must be denied.

APPENDIX F

U.S. DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: 283200946 DOB: 01/24/1967

File No: A097 126 258

Event No: MIA1003000219

In the Matter of:

Respondent: Hong Linda HUANG currently residing at: 21200 NE 38th Avenue Apt. 2703, Aventura, Florida 33180

(Number, street, city and ZIP code)

(305) 332-5802

(Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

■ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

See Continuation Page Made a Part Hereof

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(l) order was vacated pursuant to:

☐ 8CFR 208.30(f)(2)

☐ 8CRF 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

_____

(Complete Address of Immigration Court, including Room Number, if any) on a date to be set at a time to set to show why you should not be removed from the United States based on the charge(s) set forth above.

/s/ Andrew Wetherbee

Andrew Wetherbee SDAO

(Signature and Title of Issuing Officer)

Date:_____ City and State: _____

U.S. Department of Homeland Security

Continuation Page for Form I862

Alien's Name	File Number	Date
Hong Linda HUANG	A097 126 258	

Event No: MIA 1003000219

THE SERVICE ALLEGES THAT YOU:

==========

1. You are not a citizen or national of the United States;

2. You are a native of CHINA, PEOPLES REPUBLIC OF and a citizen of CHINA, PEOPLES REPUBLIC OF;

3. You were admitted to the United States on May 16, 1998, as a nonimmigrant visitor (B1) coming to the United State for the purpose of conducting business and at that time you intended to remain permanently or indefinitely in the United States;

4. You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document, and you were not exempt therefrom.

5. On April 1, 2004, you adjusted your status to that of a Lawful Permanent Resident of the United States based on your marriage to Zhi Wei WU, a United States citizen.

6. On January 14, 2010, the Service determined that your marriage to Zhi Wei WU was not a valid

marriage because at the time of your marriage you were still legally married to Ye Jun HE, your first husband;

7. On January 14, 2010, the Service determined that you entered into a sham marriage with Zhi Wei WU for the sole purpose of circumventing the immigration laws of the United States.

8. You procured or have sought to procured a visa, entry into the United States or other documentation or benefit provided under the Act, by fraud or by willfully misrepresenting a material fact, to wit: On January 14, 2010, you were interviewed at the USCIS Miami Field Office in connection with your Application for Naturalization (Form N-400) and during your interview you provided the Service with false testimony with the sole purpose of circumventing the immigration laws of the United States.

ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW:

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: alien immigrants who are not in possession of a valid unexpired immigrant visa, reentry permit, border crossing

identification card, or other valid entry document required by the Act, or who are not in possession of a valid unexpired passport, or other suitable travel document, or identity and nationality document if such document is required by regulations issued by the Attorney General pursuant to Section 212(a)(7)(A)(i)(I).

Section 237(a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at the time of entry or of adjustment of status, you were within one or more of the classes of aliens inadmissible by the law existing at such time, to wit: aliens who seek to procure, or have sought to procure, or who have procured a visa, other documentation, or admission into the United States, or other benefit provided under the Act, by fraud or by willfully misrepresenting a material fact, under Section 212(a)(6)(C)(i) of the Act.

Signature: /s/ Andrew Wetherbee Title: SDAO

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all time.

Representation: If you so choose, you may be represented in this proceedings, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct or the hearing: At the time of your hearing, you should bring with you any affidavit or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present

evidence on your own behalf, to examine any evidence presented by the Government to object on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must

surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at http://www.icc.gov/about/dro/contact.htm. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

_____

(Signature of Respondent)

Before: _____
(Signature and Title of Immigration Officer)
Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on 03/08/2010, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

☐ in person ☐ by certified mail, returned receipt

■ by regular mail

☐ Attached is a credible fear worksheet.

■ Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

_____
(Signature of Respondent if Personally Served)

Sergio Mateo DAO /s/ Sergio Mateo
_____
(Signature and Title of officer)

APPENDIX G

IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

IN RE: THE FORMER MARRIAGE OF HONG HUANG,

Petitioner/Former-Wife,

and

YEJUN HE, n/k/a Wei Chen,

Respondent/Former-Husband

/

CASE NO. 10-001829 (38)

FAMILY DIVISION

COPY/VIEW ROOM
2010 MAR-4 AM 9:08
RECEIVED
CLERK, COUNTY COURT
BROWARD COUNTY

FINAL JUDGEMENT GRANTING DECLARATORY RELIEF/ RECOGNIZING CHINESE DIVORCE DECREE

THIS CAUSE having come before the Court, on March 4th 2010, for final hearing upon the

Petitioner/Former Wife, HONG HUANG'S, Verified Petition to Domesticate Chinese Divorce Decree/For Declaratory Relief And For Other Relief Incident Thereto, and upon the appearance of the Petitioner/Former Wife HONG HUANG personally and through her counsel Donald G. Criscuolo, Esquire, and upon the appearance of the Respondent/Former-Husband YEJUN HE n/kla Wei Chen through his counsel Gary Maisel, Esquire and with the Court reviewing the file and the Answer filed by the Former Husband to the Former-Wife's Petition and based upon the evidence presented it is hereby

ORDERED AND ADJUDGED as follows:

1. This Court has jurisdiction over the parties and the subject matter.

2. The parties were married on January 19th 1998, in China.

3. In 1999 the parties, by mutual consent, initiated the process in China to obtain a divorce.

4. On January 19th, 2000 the divorce initiated by the parties, in Beijing, China was made final. A copy of the registration of the divorce along with a certified translation into English was admitted into evidence as exhibit "A".

5. The Court admitted into evidence as Exhibit "B" an affidavit from Weimin Zhang of the Beijing Ri Shang Law Firm attesting as to the validity of the Chinese divorce under Chinese law.

6. The Court finds that based upon the evidence admitted that the Chinese Court had jurisdiction of the parties and the subject matter at the time the Chinese divorce was registered on January 19th, 2000.

7. Both parties were afforded complete due process of those proceedings, both parties mutually sought the divorce and under the principles of international comity, this Court should give full force and effect to the Chinese divorce. *Pawley v. Pawley*, 46 So.2d 464 (Fla. 1950); *Cardenas v. Cardenas*, 570 So.2d 996 (Fla. 3d DCA 1991); *Hall v. Hall*, 540 So.2d 214 (Fla. 2d DCA 1989).

8. Accordingly, Final Judgment is hereby rendered in favor of the Petitioner and this Court grants the declaratory relief sought. The Chinese divorce was valid at the time of entry on January 19th, 2000 and is recognized as valid by the State of Florida.

9. No other relief was sought by ether party and no other relief is granted.

DONE AND ORDERED in chambers on the 4th day of March, 2010 in Broward County, Fort Lauderdale, Florida.

/s/

Circuit Court Judge

Copies supplied: Donald G. Criscuolo, Esquire
Gary Maisel, Esquire