

UNITED STATES DISTRICT COURT

for the

District of Massachusetts

United States of America

v.

XIAOMENG CHENG

Case No.

17-6081-MPK

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of March 18, 2016 in the county of Middlesex in the
District of Massachusetts, the defendant(s) violated:

Code Section

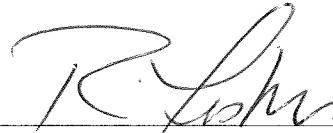
18 U.S.C. § 371

Offense Description

In that defendant engaged in a conspiracy to obstruct the lawful functions of the Department of Homeland Security in obtaining F-1 non-immigrant student visas by entering into an agreement whereby an imposter would take the TOEFL exam in the place of Cheng in order for Cheng to be fraudulently awarded a TOEFL score that meets the minimum entrance requirement for an American college or university, which would facilitate Cheng obtaining an F-1 non-immigrant student visa.

This criminal complaint is based on these facts:

See attached affidavit of Special Agent Robert B. Fisher

☒ Continued on the attached sheet.

Complainant's signature

Robert B. Fisher, Special Agent, HSI-ICE

Printed name and title

Sworn to before me and signed in my presence.

Date: 05/03/2017City and state: Boston, MA

Judge's signature

M. Page Kelley, United States Magistrate Judge

Printed name and title

AFFIDAVIT OF ROBERT B. FISHER
IN SUPPORT OF APPLICATION FOR A CRIMINAL COMPLAINT

I, Robert B. Fisher, being duly sworn, depose and state the following:

Preface

1. I am a Special Agent of the United States Immigration and Customs Enforcement ("ICE"), Homeland Security Investigations ("HSI"). I am currently assigned to the Office of the Special Agent in Charge Boston, Massachusetts, Document and Benefit Fraud Task Force ("DBFTF"), and have been so employed since August 2009. I am a graduate of the Criminal Investigator Training Program and the ICE Special Agent Training Program at the Federal Law Enforcement Training Center ("FLETC") in Glynco, Georgia. I have training and experience in the enforcement of the Immigration and Nationality Act laws of the United States and am fully familiar with the statutes applicable to the charge of conspiracy to defraud the United States as it relates to passport misuse, visa fraud, and immigration benefits to include non-immigrant visa applications and the Student and Exchange Visitor Program. I have assisted in prior investigations involving passport misuse and visa fraud for the purpose of obtaining immigration and other benefits. I have also received advanced training in identity and benefit fraud at the FLETC. Prior to becoming an ICE HSI Special Agent, I was employed as an Inspector and Program Manager with the United States Customs Service for nearly seven (7) years. I received a Bachelor's degree in Criminal Justice from Stonehill College and a Master's degree in Homeland Security Leadership from the University of Connecticut.

2. Based upon my training and experience, I know that it is a violation of Title 18 of the United States Code, Section 371 for two or more persons to conspire to defraud the United States, here specifically, by conspiring to obstruct the lawful functions of the Department of Homeland Security ("DHS") to fraudulently obtain F-1 non-immigrant student visas ("F-1 visas"). The conspiracy charged in this complaint involves a foreign national ("Test Taker"),

entering into an agreement to take the Test of English as a Foreign Language (“TOEFL”) exam in the place of another foreign national (“Beneficiary”). The object of the conspiracy is for the Beneficiary to be fraudulently awarded a TOEFL score that meets an American college or university’s minimum entrance requirement, which would facilitate the Beneficiary obtaining an F-1 visa.

3. The following affidavit is furnished to support a criminal complaint against Xiaomeng Cheng (“Cheng”) and others known and unknown. Based on the facts contained in this affidavit, I believe there is probable cause to believe that Cheng and others known and unknown have violated 18 U.S.C. §371.

4. The facts herein are based on my involvement in this investigation, a review of reports written by other law enforcement officers during this investigation, and my conversations with those officers. In submitting this affidavit, I have not included every fact known to me regarding this investigation. Instead, I have included only those facts that I believe are sufficient to establish probable cause.

Background

5. In May 2016, DBFTF opened an investigation regarding possible fraud involving Chinese nationals and college admissions exams occurring in the Boston area. The information was developed from an investigation by the HSI Philadelphia DBFTF and by information from the Educational Testing Service (“ETS”), a nonprofit company that develops, administers, and scores various college admissions tests worldwide, including the TOEFL.

6. The TOEFL exam is an English language test recognized by more than 9,000 colleges, universities, and agencies in more than 130 countries. It is used by the United States government in issuing, extending, or renewing F-1 visas, and as an entrance requirement for colleges and universities.

7. An F-1 visa is issued to international students who are attending an academic program or English Language Program at a United States college or university. The process is controlled by the DHS's Student and Exchange Visitor Program ("SEVP"), and requires the international student to take the TOEFL exam and use his/her score to apply for admission to a SEVP-certified school. Acceptance at these institutions is dependent on, among other factors, the student achieving the particular school's minimum TOEFL score requirement. If the student is accepted to a school, the student is issued a Form I-20 by the designated school official. The Form I-20 is a multi-purpose document issued by A DHS-approved educational institution certifying that a student has been legitimately admitted to a full-time study program. The student then uses the I-20 form to apply for a student visa from the United States Department of State. Once arriving in the United States, the student presents his/her Form I-20 and student visa to the United States Customs and Border Protection for the purpose of gaining admission to the United States to attend their respective school.

8. As such, an international student's ability to obtain an F-1 visa depends on his/her ability to achieve the minimum TOEFL score for admittance to an American college or university.

9. Based on my training and experience, I know that one method used to obtain such a minimum TOEFL score is for a Beneficiary who cannot achieve a school's minimum TOEFL requirement to hire an imposter Test Taker to take the exam in his/her place.

10. By various means, the Test Taker will be provided access to the Beneficiary's ETS account (necessary to register for exams, check score results, and send out scores to colleges) and identification (typically the Beneficiary's international passport), and present that account information and passport to the ETS official administering the TOEFL exam.

11. When a student arrives for a TOEFL exam, the TOEFL administrator will record

what identification a student uses, and in the case of a passport, note the passport number in the ETS registered account associated with that particular student. Additionally, the person who is physically present for the exam is photographed, and that photograph becomes part of the ETS record. As such, when a Beneficiary has taken a TOEFL exam legitimately on multiple occasions, his/her true likeness may be included on the ETS record associated with one or more exam scores that fail to achieve the minimum TOEFL requirement for the school they currently attend. The Beneficiaries' ETS record will also include an exam score that does meet their school's minimum entrance requirement with a different person depicted for that exam.

12. The Beneficiary agrees to pay the Test Taker or unknown third-parties for the Test Taker to take the TOEFL exam for him/her.

13. Underlying this scheme is the DHS' SEVP's interest in not allowing its F-1 visa program to be exploited by those individuals who have not legitimately earned the right to attend an American college or university, but gained entry into the United States in part, through this fraudulent process.

Investigation

14. In the Spring of 2016, Special Agents from DBFTF and Diplomatic Security Service – Boston Field Office received information from the HSI Philadelphia DBFTF and ETS that a person ("YY") intended to impersonate another Chinese national and take an upcoming TOEFL exam in her place in Boston on May 21, 2016. On that day, YY was removed from the testing room while taking the exam by an ETS Investigator on suspicion of being an impostor. YY is an F-1 non-immigrant student from China attending the Hult International Business School. After being Mirandized by law enforcement, YY agreed to speak with me and another law enforcement officer. While under oath, YY admitted to being a paid Test Taker and was in possession of a People's Republic of China passport in the identity of ("SWC"). YY stated that

her friend and classmate Yue Wang (“Wang”) had been contacted by someone in China to take the May 21, 2016 TOEFL exam on the behalf of SWC, but asked YY to take the TOEFL exam for her. YY stated that Wang had paid her \$100 upfront and had promised her another \$800 if she achieved a score of ninety (90) or better on the TOEFL exam.

15. On May 24, 2016, I participated in a consensual interview of Wang at her residence in Malden, MA. Wang is also an F-1 non-immigrant student from China attending the Hult International Business School. After being Mirandized and while under oath, Wang admitted to hiring her friend and classmate YY to take a TOEFL exam in her place under the identity of SWC. Wang also admitted to having been a Test Taker on at least three (3) other occasions but decided against taking the May 21, 2016, exam for SWC because she read in the news about entrance exam Test Takers being arrested. Wang was able to recall taking the TOEFL exam for Cheng and (“LH”). Subsequent research by ETS revealed photos depicting Wang under the Cheng identity, as well as two other women including LH and (“SZ”) with TOEFL exam dates and valid scores in March of 2016 for Cheng and LH, and December 2015 for SZ.

16. Wang confirmed that she received genuine Chinese passports either through the mail, or on one occasion in person, and used those passports as identification to take TOEFL exams under those respective identities. I then inspected Wang’s phone which revealed: i) screenshots of ETS account information for Cheng and LH; ii) photographs of LH’s genuine Chinese passport; and iii) USPS and FedEx receipts detailing packages being sent between Wang and LH. Wang admitted to having been paid nearly \$7,000 for taking these TOEFL exams in place of Cheng, SZ, and LH.

17. Cheng is currently an F-1 non-immigrant student from China attending Arizona State University in Tempe, AZ.

18. I have reviewed reports drafted by Special Agents from the Phoenix office of HSI detailing an April 5, 2017 consensual interview of Cheng which took place at Arizona State University. After being Mirandized and agreeing to speak with law enforcement, Cheng requested to end the interview after law enforcement began to question her about the TOEFL exam.

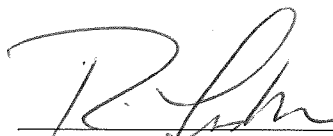
19. My review of Arizona State University's admission standards show that international students who wish to attend Arizona State University must achieve a minimum score of 61 on the TOEFL exam. My review of the ETS records associated with Cheng revealed that on June 29, 2014, August 23, 2014, and October 18, 2014 a person sat for the TOEFL exam and failed to earn a score that met Arizona State's minimum entrance requirement. Further review of Cheng's ETS account revealed that that on March 18, 2016 a person sat for the TOEFL exam and earned a 97, which surpassed Arizona State's minimum entrance requirement.

20. Based on my training and experience, a review of United States Department of State documents, a review of the ETS account associated with Cheng, and the statements made by Wang, the woman depicted in the ETS records as having sat for the TOEFL exams administered on June 29, 2014, August 23, 2014, and October 18, 2014 under the Cheng identity is in fact Cheng, but the woman depicted in the ETS records as having sat for the TOEFL exam in Waltham, MA on March 18, 2016 under the Cheng identity is in fact Wang.

Conclusion

21. Based on the foregoing, I believe there is probable cause to believe that Xiaomeng Cheng and others known and unknown, engaged in a conspiracy to obstruct the lawful functions of the DHS in obtaining F-1 visas by entering into an agreement whereby Wang would take the TOEFL exam in the place of Cheng in order for Cheng to be fraudulently awarded a TOEFL score that meets the minimum entrance requirement for an American college or university, which

would facilitate Cheng obtaining an F-1 visa in violation of Section 371 of Title 18 of the United States Code.



Robert B. Fisher, Special Agent
U.S. Immigration and Customs Enforcement
Homeland Security Investigations

Sworn to before me this 3rd day of May 2017.



Honorable M. Page Kelley
United States Magistrate Judge



Criminal Case Cover Sheet**U.S. District Court - District of Massachusetts**Place of Offense: _____ Category No. II Investigating Agency HSI-ICECity Waltham, MA**Related Case Information:**County Middlesex

Superseding Ind./ Inf. _____ Case No. _____

Same Defendant _____ New Defendant _____

Magistrate Judge Case Number 17-6081-MPK

Search Warrant Case Number _____

R 20/R 40 from District of _____

Defendant Information:Defendant Name Xiaomeng Cheng Juvenile: ☐ Yes ☒ NoIs this person an attorney and/or a member of any state/federal bar: ☐ Yes ☒ No

Alias Name _____

Address (City & State) Tempe, AZBirth date (Yr only): 1996 SSN (last4#): _____ Sex F Race: Asian Nationality: Chinese

Defense Counsel if known: _____ Address _____

Bar Number _____

U.S. Attorney Information:AUSA Nicholas Soivilien Bar Number if applicable 675757Interpreter: ☒ Yes ☐ No List language and/or dialect: Mandarin/CantoneseVictims: ☐ Yes ☒ No If yes, are there multiple crime victims under 18 USC§3771(d)(2) ☐ Yes ☐ NoMatter to be SEALED: ☒ Yes ☐ No☒ Warrant Requested ☐ Regular Process ☐ In Custody**Location Status:**

Arrest Date _____

☐ Already in Federal Custody as of _____ in _____☐ Already in State Custody at _____ ☐ Serving Sentence ☐ Awaiting Trial☐ On Pretrial Release: Ordered by: _____ on _____Charging Document: ☒ Complaint ☐ Information ☐ IndictmentTotal # of Counts: ☐ Petty _____ ☐ Misdemeanor _____ ☒ Felony 1

Continue on Page 2 for Entry of U.S.C. Citations

☒ I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.Date: 5/03/2017Signature of AUSA: Nicholas Soivilien

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant Xiaomeng Cheng

U.S.C. Citations

	<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>18 U.S.C. § 371</u>	<u>Conspiracy</u>	<u>1</u>
Set 2	_____	_____	_____
Set 3	_____	_____	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION: _____