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DEC 08 2008

DEPARTMENT OF REAL ESTATE

By L. Frost

BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

In the Matter of the Application of

SISSY YAN RILEY,

Respondent.

No. H-9486 SF

ORDER GRANTING UNRESTRICTED LICENSE

On April 5, 2006, a Decision was rendered herein denying the Respondent's application for a real estate salesperson license, but granting Respondent the right to the issuance of a restricted real estate salesperson license. A restricted real estate salesperson license was issued to Respondent on June 10, 2006, and Respondent has operated as a restricted licensee since that time.

On July 15, 2008, Respondent petitioned for the removal of restrictions attaching to Respondent's real estate salesperson license.

I have considered Respondent's petition and the evidence submitted in support thereof including Respondent's record as a restricted licensee. Respondent has demonstrated to my satisfaction that Respondent meets the requirements of law for the issuance to Respondent of an unrestricted real estate salesperson license and that it would not be against the public interest to issue said license to Respondent.

1 NOW, THEREFORE, IT IS ORDERED that Respondent's petition for removal of
2 restrictions is granted and that a real estate salesperson license be issued to Respondent subject to
3 the following understanding and conditions:

4 1. The license issued pursuant to this order shall be deemed to be the first renewal
5 of respondent's real estate salesperson license for the purpose of applying the provisions of
6 Section 10153.4.

7 2. Within nine (9) months from the date of this order respondent shall:

8 (a) Submit a completed application and pay the appropriate fee for a real estate
9 salesperson license, and

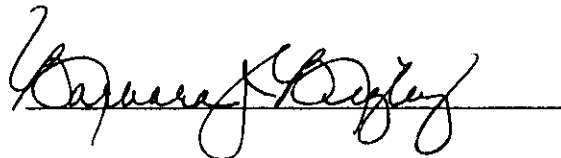
10 (b) Submit evidence of having taken and successfully completed the courses
11 specified in subdivisions (a) (1), (2), (3), (4) and (5) of Section 10170.5 of the
12 Real Estate Law for renewal of a real estate license.

13 3. Upon renewal of the license issued pursuant to this order, respondent shall
14 submit evidence of having taken and successfully completed the continuing education
15 requirements of Article 2.5 of Chapter 3 of the Real Estate Law for renewal of a real estate
16 license.

17 This Order shall become effective immediately.

18 IT IS SO ORDERED 11-21-08

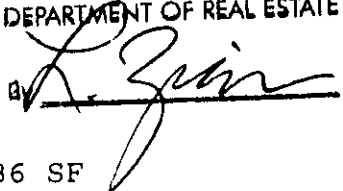
19 JEFF DAVI
20 Real Estate Commissioner

21 
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23 BY: Barbara J. Bigby
24 Chief Deputy Commissioner
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26
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BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

* * *

FILED
APR 13 2006
DEPARTMENT OF REAL ESTATE
By 

In the Matter of the Application of)
YAN CISSY HE,) NO. H-9486 SF
Respondent.) OAH NO. N-2006010717
_____)

DECISION

The Proposed Decision dated March 17, 2006, of the Administrative Law Judge of the Office of Administrative Hearings is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. There is no statutory restriction on when a new application may be made for an unrestricted license. Petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

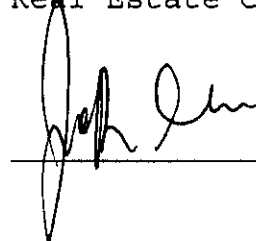
If and when application is made for a real estate salesperson license through a new application or through a petition for removal of restrictions, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon
on MAY - 4 2006.

IT IS SO ORDERED

4-5-06

JEFF DAVI
Real Estate Commissioner



BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

In the Matter of the Application of:

YAN CISSY HE,

Respondent.

Case No. H-9486 SF

OAH No. N2006010717

PROPOSED DECISION

Administrative Law Judge Charles Marson, Office of Administrative Hearings, State of California, heard this matter on February 28, 2006, in Oakland, California.

Department of Real Estate Counsel David B. Seals represented complainant E. J. Haberer II, Deputy Real Estate Commissioner, State of California.

Arthur K. Wachtel, Attorney at Law, represented respondent Yan Cissy He, who was present.

The matter was submitted on February 28, 2006.

FACTUAL FINDINGS

1. Respondent Yan Cissy He submitted to the Department of Real Estate (Department) an application for a real estate salesperson license. The application was dated November 6, 2004, and the Department received it on November 18, 2004.

2. On September 17, 2003, in the United States District Court, Northern District of California, respondent was convicted on her plea of guilty of a violation of section 1546(a) of title 18 of the United States Code (visa fraud), a felony. Respondent was placed on formal probation for three years. Conditions of probation included paying a \$100 assessment, a \$5,000 fine, and the sum of \$200,000 in lieu of forfeiture of real property respondent and her husband owned.

3. The facts and circumstances of the conviction are as follows: in 1995 respondent, a native of China, entered the United States with her 7-year-old daughter. They joined Dawei Zhou, respondent's husband and her daughter's father, who had come to the United States in 1989. Although Dawei Zhou was fluent in English and had graduated from law schools in both China and the United States, respondent neither spoke nor read English when she arrived in the United States.

4. In October 1995, respondent's husband Dawei Zhou presented to her certain English-language documents and asked her to sign them. Respondent signed them.

5. The documents respondent signed furthered her husband's scheme to illegally obtain and distribute L-1 non-immigrant visas. An L-1 visa allows a non-immigrant visitor to the United States to work at the United States office of a foreign company, and is obtained on petition of an employer in the United States (the petitioner) on behalf of an individual visitor (the beneficiary). The petition is usually accompanied by documents showing that the petitioner is an established business in the United States, and that the beneficiary has worked for that business. Typically those documents are rental or lease agreements showing that the petitioner exists at a certain location, documents of incorporation, bank account information, invoices, tax returns, and documents showing the relationship of a foreign company to the petitioner.

6. On September 20, 2001, respondent and her husband Dawei Zhou were indicted in the United States District Court, Northern District of California, on 25 counts of visa fraud in violation of section 1546(a) of title 18 of the United States Code and related statutes. On September 17, 2003, pursuant to a written plea agreement with the United States Attorney, respondent pleaded guilty to one count of the indictment. The remaining counts against her were dismissed, and a judgment of conviction was entered. The written plea agreement respondent signed states in relevant part:

I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true: On or about October 7, 1996, in the Northern District of California and elsewhere, I presented to the INS a visa application and other documents required by the immigration laws regarding a phony company and petitioner named Beihai International Culture & Art Development Center (BHC International) and a beneficiary named Da Yi Xu. I knew that the application and documents contained false statements with respect to a material fact, to wit: that BHC International had an operating business at 718 Laurel Avenue, Millbrae, California; that BHC International had an account at Sumitomo Bank which contained \$60,860.70; and that BHC International conducted business with Pactrin Inc. I knew these statements were false and I presented the statements in order that the INS would grant the beneficiary a L-1 visa.

7. As part of her plea agreement, respondent promised to cooperate with federal prosecutors in truthfully answering any and all questions about the visa fraud scheme in interviews and further proceedings. Pursuant to that agreement, respondent provided information to the Federal Bureau of Investigation.

8. Promptly after sentencing, respondent paid to the United States the \$100 assessment fee and the \$2,000 fine required to be paid as part of her sentence. She also promptly paid to the United States the sum of \$200,000 in lieu of forfeiture of real property at 718 Laurel Avenue, Millbrae, California, that she and her husband owned.

9. Respondent began her three-year probation on September 19, 2003. On February 22, 2005, respondent applied by motion for early release from probation. The United States and her probation officer declined to oppose the motion, which was granted on April 20, 2005.

10. Respondent sincerely regrets her participation in her husband's visa fraud scheme. Immediately upon her arrest, she began cooperating with law enforcement officers. Respondent and her husband Dawei Zhou are separated. After an incident in which her husband struck her, respondent testified against him in a criminal prosecution for battery in the San Mateo Superior Court. Dawei Zhou later returned to China.

11. On November 4, 2004, respondent acquired an Employment Authorization for work in the United States, and on September 14, 2005, respondent and her daughter obtained the status of permanent residents of the United States.

12. Respondent committed visa fraud in 1996 in part because of her unfamiliarity with written English, and in part because of cultural norms among Chinese couples requiring that wives obey their husbands.

13. Respondent is now 37 years old. She derives income from renting real property that she owns. Her 1996 crime appears to have been an isolated incident in an otherwise law-abiding and productive life. Except for her visa fraud conviction, respondent has never been convicted of a crime. Since that offense, respondent has been a caring and responsible mother to her 17-year-old daughter Angel and her 8-year-old son Joseph. The family is close and stable. Respondent actively supervises her children's education and encourages Angel's musical talents. (Angel now teaches piano.) Respondent is active in her local Parent Teacher Association (PTA). In 2001 she enrolled in English-language courses at the San Mateo Adult School, and she is now proficient in spoken and written English. She presented a vocal performance at the grand opening of the School's new building. She has contributed to the New York Firefighters' Memorial Fund.

14. Respondent is honest and has integrity, according to four friends and one professional associate who know of her conviction. Testifying to that effect were Thomas Bird, a legal secretary who was once respondent's tenant and is now a friend; Tiffany Jin, an employee of Symyx Technology of Palo Alto, California, who is a friend; John Mah, a friend who has been employed by the Boeing Company and the Bechtel Group and holds a Florida teaching credential; Jeremy Reilly, respondent's boyfriend, a student and former sergeant in the United States Marines; and Edward Yuan, a licensed real estate broker who has represented respondent in real estate transactions and will employ her if she obtains the license at issue here.

15. Respondent disclosed her conviction for visa fraud on her application for a license as a real estate salesperson.

16. Respondent has not completed all the courses required under Business and Professions Code section 10153.4.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480, subdivision (a), authorizes the denial of a license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed business or profession. Business and Professions Code section 10177, subdivision (b), which is specific to real estate licenses, authorizes the denial of a license if the applicant has been convicted of a felony or a crime involving moral turpitude.

2. California Code of Regulations, title 10, section 2910, sets forth the criteria for determining whether a crime is substantially related to the qualifications, functions or duties of a real estate licensee. A crime is deemed to be substantially related if it involves "[c]ounterfeiting, forging or altering of an instrument or the uttering of a false statement" (subd. (a)(2)), or "[t]he employment of bribery, fraud, deceit, falsehood or misrepresentation to achieve an end" (subd. (a)(4)).

3. A violation of section 1546(a) of title 18 of the United States Code is a felony and a crime of moral turpitude that is substantially related to the qualifications, functions or duties of a real estate licensee under California Code of Regulations, title 10, section 2910, subdivisions (a)(2) and (a)(4). Respondent's conviction constitutes cause to deny her license application under Business and Professions Code section 480, subdivision (a), and section 10177, subdivision (b).

4. Since committing the crime in 1996, respondent has satisfied all of the Department's criteria of rehabilitation set forth in California Code of Regulations, title 10, section 2911, that pertain to her situation.¹ As set forth in Factual Findings 12, 13 and 14, more than two years have passed since the criminal conviction (subd. (a)).² Respondent qualified for and obtained an early discharge from probation (subd. (e)). She promptly paid the assessment, fine, and forfeiture sum required by her sentence (subds. (g), (j)). Her involvement in community programs is conscientious (subd. (l)). Testimony from her

¹ Subdivision (b) is inapplicable since respondent was not required to make restitution. Subdivision (c) is inapplicable because there appears to be no procedure for expungement of a federal felony conviction. Her case presents no issue of registration (subd. (d)), abstinence (subd. (f)), or business practices needing correction (subd. (k)).

² All citations in this paragraph are to subdivisions of California Code of Regulations, title 10, section 2911.

character witnesses shows that she has fostered new and different social and business relationships (subd. (m)). Testimony from those witnesses, respondent's own testimony, and the absence of any misconduct after her 1996 crime demonstrate that she has undergone a substantial change in attitude (subd. (n)(1), (2), (5)). On her license application and in her testimony at the hearing, respondent was forthright about her criminal history. In view of the context of the crime and the strong evidence of rehabilitation, it would not be contrary to the public interest to grant respondent a restricted real estate license.

ORDER

The application of respondent Yan Cissy He for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to her pursuant to Business and Professions Code section 10156.5, if she makes application therefor and pays to the Department of Real Estate the appropriate fee for the restricted license within 90 days from the effective date of this decision. The restricted license issued to respondent shall be subject to all of the provisions of Business and Professions Code section 10156.7 and to the following limitations, conditions and restrictions imposed under authority of section 10156.6 of that Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:
 - a. Respondent's conviction, including by a plea of nolo contendere, of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or
 - b. Receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to the restricted license.
2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license or the removal of any of the conditions, limitations or restrictions attaching to the restricted license until two years have elapsed from the date of issuance of the restricted license to respondent.
3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 (Rev. 4/88) approved by the Department of Real Estate, which shall certify as follows:
 - a. That the employing broker has read the decision which is the basis for the issuance of the restricted license; and

- b. That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a real estate license is required.
4. Respondent's restricted real estate salesperson license is issued subject to the requirements of Business and Professions Code section 10153.4, to wit: respondent shall, within 18 months of the issuance of the restricted license, submit evidence satisfactory to the Commissioner of successful completion, at an accredited institution, of a course in real estate practices and one of the courses listed in Business and Professions Code section 10153.2, other than real estate principles, advanced legal aspects of real estate, advanced real estate finance or advanced real estate appraisal. If respondent fails to timely present to the department satisfactory evidence of successful completion of the two required courses, the restricted license shall be automatically suspended effective 18 months after the date of its issuance. Said suspension shall not be lifted unless, prior to the expiration of the restricted license, respondent has submitted the required evidence of course completion and the Commissioner has given written notice to respondent of lifting of the suspension.
5. Pursuant to Business and Professions Code section 10154, if respondent has not satisfied the requirements for an unqualified license under Business and Professions Code section 10153.4, respondent shall not be entitled to renew the restricted license and shall not be entitled to the issuance of another license which is subject to section 10153.4 until four years after the date of the issuance of the preceding restricted license.

DATED: March 17, 2006.


CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings

1 DAVID B. SEALS, Counsel (SBN 69378)
2 Department of Real Estate
3 P. O. Box 187007
4 Sacramento, CA 95818-7007

5 Telephone: (916) 227-0789
6 -or- (916) 227-0792 (Direct)

FILED
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DEPARTMENT OF REAL ESTATE

[Signature]

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)

No. H-9486 SF

12 YAN CISSY HE,)

STATEMENT OF ISSUES

13 Respondent.)

14
15 The Complainant, E. J. Haberer II, a Deputy Real
16 Estate Commissioner of the State of California, for Statement of
17 Issues against YAN CISSY HE (hereinafter "Respondent") alleges
18 as follows:

19 I

20 Respondent made application to the Department of Real
21 Estate of the State of California for a real estate salesperson
22 license on or about November 18, 2004 with the knowledge and
23 understanding that any license issued as a result of said
24 application would be subject to the conditions of Section
25 10153.4 of the California Business and Professions Code.

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II

Complainant, E. J. Haberer II, a Deputy Real Estate Commissioner of the State of California, makes this Statement of Issues in his official capacity.

III

On or about September 17, 2003, in the United States District Court, Northern District of California, Respondent was convicted of violation of 18 USC 1546(a) (Visa Fraud), a felony and a crime involving moral turpitude and/or which bears a substantial relationship under Section 2910, Title 10, California Code of Regulations (herein "the Regulations"), to the qualifications, functions or duties of a real estate licensee.

IV

The crime of which Respondent was convicted, as alleged in Paragraph III above constitutes cause for denial of Respondent's application for a real estate license under Sections 480(a) and 10177(b) of the California Business and Professions Code.

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1 WHEREFORE, the Complainant prays that the above-
2 entitled matter be set for hearing and, upon proof of the
3 charges contained herein, that the Commissioner refuse to
4 authorize the issuance of, and deny the issuance of, a real
5 estate salesperson license to Respondent, and for such other and
6 further relief as may be proper under other provisions of law.

7
8 
9 E. J. HABERER II
Deputy Real Estate Commissioner

10 Dated at Oakland, California,
11 this 30th day of December, 2005.