

No. CR 10-00414 RMW

PVT

UNITED STATES DISTRICT COURT

FILED
2010 JUL 14 P 2:37

NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. SAN JOSE

SAN JOSE DIVISION

THE UNITED STATES OF AMERICA

vs.

EVELYN SINENENG-SMITH

SUPERSEDING INDICTMENT

SEE ATTACHMENT

A true bill.

JT Hendforth
Foreperson

Filed in open court this 14 day of July

A.D. 2010

Patricia V. Inman
UNITED STATES MAGISTRATE JUDGE

Bail. \$ no process

RMW

ATTACHMENT TO INDICTMENT COVER SHEET

CR 10-00414-RMW

U.S.

v.

EVELYN SINENENG-SMITH

COUNTS ONE THROUGH THREE: Title 8, United States Code, Section 1324(a)(1)(A)(iv) & (B)(i) - Encouraging and Inducing Illegal Immigration for Private Financial Gain.

COUNTS TWO THROUGH SIX: Title 18, United States Code, Section § 1341 - Mail Fraud

COUNTS SEVEN AND EIGHT: Title 26, United States Code, Section 7206(1) - Willfully Subscribing to a False Tax Return.

COUNT NINE AND TEN: Title 18, United States Code, Section 1957 - Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity.

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RICHARD W. WIEKING
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N.D. CA. SAN JOSE

1 JOSEPH P. RUSSONIELLO (CSBN 44332)
2 United States Attorney

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

RMW
PWT

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)
13 v.)
14 EVELYN SINENENG-SMITH,)
15 Defendant.)
16)
17)
18)
19)
20)

No. CR 10-00414 RMW
VIOLATIONS: 8 U.S.C. §§
1324(a)(1)(A)(iv) & (B)(i) - Encouraging
and Inducing Illegal Immigration for Private
Financial Gain; 18 U.S.C. §1341 - Mail
Fraud; 26 U.S.C. § 7206(1) - Willfully
Subscribing to a False Tax Return; 18
U.S.C. § 1957 - Engaging in Monetary
Transactions in Property Derived from
Specified Unlawful Activity; 18 U.S.C. §
982(a)(6)(A)(ii)(II) - Criminal Forfeiture of
Facilitating Property; 18 U.S.C. §
981(a)(1)(C) and 28 U.S.C. § 2461(c) -
Criminal Forfeiture of Mail Fraud Proceeds;
18 U.S.C. § 982(a)(1) - Criminal Forfeiture
of Money Laundering Proceeds
SAN JOSE VENUE

21
22 SUPERSEDING INDICTMENT

23 The Grand Jury charges:

24 At all times relevant to this indictment:

25 1. From approximately 1990 until April 2008, Evelyn Sineneng-Smith ("Sineng-
26 Smith) owned and operated an immigration consultation business located at 1022 West Taylor
27 Street in San Jose, California. She also had "store front" offices in Beverly Hills, California, La
28 Jolla, California, Las Vegas, Nevada, and New York, New York.

SUPERSEDING INDICTMENT

1 2. As an immigration consultant, Sineneng-Smith counseled foreign nationals on
2 applying for and obtaining employment-based visas in order for them to work in the residential
3 health care industry.

4 3. The United States Citizenship and Immigration Services (“USCIS”) is a
5 government agency within the United States Department of Homeland Security that oversees
6 lawful immigration to the United States.

7 4. An “alien” is any person who is not a citizen or national of the United States.

8 5. A “non-immigrant visa” provides an alien with a temporary stay in the United
9 States, and an “immigrant visa” is issued for permanent residence in the United States.

10 6. Under United States immigration law, an alien can obtain an employment-based
11 visa. An employer must first file an application, known as a Form ETA-750, with the United
12 States Department of Labor (“USDOL”) seeking to hire the alien. After USDOL approves the
13 form, the employer can apply on the alien’s behalf to obtain a visa number and file an application
14 with USCIS called the I-140, Petition for Alien Worker. The petition is signed under penalty of
15 perjury. The Department of State issues a limited number of visas annually, and if a visa for the
16 employment-based visa category is available, an alien can file form I-485, Application to
17 Register Permanent Residence or Adjust Status, to become a lawful permanent resident of the
18 United States. This form is also signed under penalty of perjury.

19 7. In 1994, Congress enacted Section 245(i) of the Immigration and Naturalization
20 Act, known as the Legal Immigration Family Equity Act (“LIFE Act”), which permitted certain
21 aliens who were otherwise ineligible for adjustment of status to pay a penalty in order to adjust
22 their status without leaving the United States. The LIFE Act temporarily extended the ability of
23 certain aliens to adjust their status until April 30, 2001. Therefore, in order for an alien to adjust
24 his status under Section 245(i), he must be the beneficiary of a qualifying immigrant visa petition
25 or application for labor certification that was filed on or before April 30, 2001 and meet statutory
26 and regulatory requirements. The LIFE Act was previously limited to eligible aliens who filed
27 applications on or before January 14, 1998.

28 //

1 COUNTS ONE THROUGH THREE: (8 U.S.C. § 1324(a)(1)(A)(iv) & (B)(i) - Encouraging and
2 Inducing Illegal Immigration for Private Financial Gain)

3 8. The factual allegations contained in Paragraphs One through Seven are realleged
4 and incorporated herein by reference as if set forth in full.

5 9. On or about on the dates set forth below, in the Northern District of California, the
6 defendant,

7 EVELYN SINENENG-SMITH,

8 identified in the counts below, for the purpose of private financial gain, did encourage and induce
9 an alien to reside in the United States, knowing and in reckless disregard of the fact that such
10 residence in the United States was in violation of the law:

COUNT	RETAINER AGREEMENT	ALIEN'S INITIALS	ALIEN'S ADMISSION NUMBER (I-94)
ONE	June 5, 2005	O.G.	XXXXXX0310
TWO	May 5, 2007	A.G.	XXXXXX6809
THREE	June 18, 2007	H.E.	XXXXXX9809

15 All in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(iv) and (B)(i).

16 COUNTS FOUR THROUGH SIX: (18 U.S.C. § 1341 - Mail Fraud)

17 10. The factual allegations contained in Paragraphs One through Nine are realleged
18 and incorporated herein by reference as if set forth in full.

19 11. It was part of the scheme and artifice to defraud that Sineneng-Smith counseled
20 foreign nationals, most of whom entered the United States on visitor's visas from the Philippines,
21 to apply for a Department of Labor Foreign Labor Certification in order to work in residential
22 health care facilities.

23 12. It was part of the scheme and artifice to defraud that Sineneng-Smith entered into
24 contracts known as "Retainer Agreement For Professional Services" with foreign nationals and
25 their employers to file, among other documents, applications for a Foreign Labor Certification
26 with the DOL, and an I-140, Petition for Alien Worker, with CIS. Sineneng-Smith charged
27 approximately \$5,900.00 for the filing of an application for a Foreign Labor Certification with
28

1 the DOL, and \$900.00 for the filing of the I-140 form with CIS.

2 13. It was part of the scheme and artifice to defraud that Sineneng-Smith promoted
 3 DOL's labor certification program as a way for foreign nationals to obtain a permanent resident
 4 employment-based visa, all the while knowing full well that foreign nationals who did not file
 5 petitions with DOL or CIS before April 30, 2001 and met certain regulatory and statutory criteria,
 6 were not eligible to obtain an employment-based visas. Sineneng-Smith knew that her clients
 7 overstayed the amount of time that they were allowed to be in the United States and worked
 8 illegally at various health care facilities.

9 14. It was further part of the scheme and artifice to defraud that Sineneng-Smith gave
 10 her clients a document, entitled "Prayer for Your Mercy & Leniency" addressed to state and
 11 federal government agencies. The document, which contained Sineneng-Smith's signature,
 12 stated that the alien who possessed it was applying for a Department of Labor Foreign Labor
 13 Certification, and requested the government official exercise his discretion to allow the alien to
 14 remain in the United States during the processing of application. The bottom of the letter listed
 15 an expiration date.

16 15. On or about on the dates listed in the counts below, in the Northern District of
 17 California and elsewhere, the defendant,

18 EVELYN SINENENG-SMITH,

19 having devised and intending to devise a scheme and artifice to defraud and obtain money by
 20 means of materially false and fraudulent pretenses, representations, and promises, as described
 21 above, and for the purpose of executing said scheme and artifice and attempting so to do,
 22 knowingly deposited and caused to be deposited to be sent and delivered by the United States
 23 Postal Service the following documents:

COUNT	DATE	DOCUMENT	MAILED FROM	MAILED TO
FOUR	December 2, 2005	Letter from Sineneng-Smith transmitting Department of Labor Application for Permanent Employment Certification for client O.G.	San Jose, CA	Chicago, IL

1 2 3	FIVE July 12, 2007	Letter signed by Sineneng-Smith accompanying Form I-140, Immigrant Petition for Alien Worker, on behalf of client A.G.	San Jose, CA	Lincoln, NE
4 5 6	SIX October 22, 2007	Letter to client H.E. from Sineneng-Smith entitled "Prayer for Your Mercy & Leniency on behalf of H.E."	San Jose, CA	Soquel, CA

7 All in violation of Title 18, United States Code, Section 1341.

8 COUNT SEVEN: (26 U.S.C. § 7206(1) - Willfully Subscribing to a False Tax Return)

9 16. On or about June 25, 2003, in the Northern District of California, the defendant,
10 EVELYN SINENENG-SMITH,
11 then a resident of San Jose, California, did willfully make and subscribe a U.S. Individual
12 Income Tax Return, Form 1040 (married filing separately) for the tax year 2002, which was
13 verified by a written declaration that it was made under penalties of perjury, and was filed with
14 the Internal Revenue Service, which said U.S. Individual Income Tax Return she did not believe
15 to be true and correct as to every material matter in that the said U.S. Individual Income Tax
16 Return reported gross receipts on Line 1 of Schedule C of the return to be \$749,020.00, whereas
17 as she then and there well knew and believed, the gross receipts for her immigration services for
18 the 2002 tax year were greater than the amount reported.

19 All in violation of Title 26, United States Code, Section 7206(1).

20 COUNT EIGHT: (26 U.S.C. § 7206(1) - Willfully Subscribing to a False Tax Return)

21 17. On or about October 15, 2004, in the Northern District of California, the
22 defendant,
23 EVELYN SINENENG-SMITH,
24 then a resident of San Jose, California, did willfully make and subscribe a U.S. Individual
25 Income Tax Return, Form 1040 (married filing separately) for the tax year 2003, which was
26 verified by a written declaration that it was made under penalties of perjury, and was filed with
27 the Internal Revenue Service, which said U.S. Individual Income Tax Return she did not believe
28 to be true and correct as to every material matter in that the said U.S. Individual Income Tax

1 Return reported gross receipts on Line 1 of Schedule C of the return to be \$883,758.00, whereas
 2 as she then and there well knew and believed, the gross receipts for her immigration services for
 3 the 2003 tax year were greater than the amount reported.

4 All in violation of Title 26, United States Code, Section 7206(1).

5 COUNTS NINE THROUGH TEN: (18 U.S.C. § 1957 - Engaging in Monetary
 6 Transactions in Property Derived from Specified
 Unlawful Activity)

7 18. The factual allegations contained in Paragraphs One through Seven and Counts
 8 One through Three are realleged and incorporated herein by reference as if set forth in full.

9 19. On or about on the dates listed in the counts below, in the Northern District of
 10 California, the defendant,

11 EVELYN SINENENG-SMITH,

12 identified in the counts below, did knowingly engage and attempt to engage in the following
 13 monetary transactions by, through or to a financial institution, affecting interstate commerce, in
 14 criminally derived property of a value greater than \$10,000, such property having been derived
 15 from a specified unlawful activity, that is, encouraging and inducing illegal immigration for
 16 purposes of private financial gain, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(iv) and (B)(i);

COUNT	DATE	FINANCIAL TRANSACTION
NINE	7/15/2005	Bank of America Check No. 5966, in the amount of \$37,500.00, made payable to First American Title Company
TEN	7/11/2006	Bank of America Check No. 7149, in the amount of \$57,500.00 made payable to First American Title Company

17 All in violation of Title 18, United States Code, Section 1957.

18 CRIMINAL FORFEITURE ALLEGATION ONE: (18 U.S.C. § 982(a)(6)(A)(ii)(II) - Criminal
 19 Forfeiture of Facilitating Property)
 20

21 20. The allegations contained in Paragraphs One through Seven and Counts One
 22 through Three are hereby realleged for the purpose of alleging forfeiture pursuant to Title 18,
 23 United States Code, Section 982(a)(6)(A)(ii)(II).
 24

25 21. Pursuant to Title 18, United States Code, Section 982(a)(6)(A)(ii)(II), upon
 26 conviction of an offense in violation of Title 18, United States Code, Sections 1324(a)(1)(A)(iv)
 27
 28

1 and (B)(i), the defendant, Evelyn Sineneng-Smith, shall forfeit to the United States of America
2 any conveyance, including any vessel, vehicle, or aircraft, used in the commission of the offense
3 of which the defendant is convicted, any property, real or personal, that constitutes or is derived
4 from or is traceable to the proceeds obtained directly or indirectly from the commission of the
5 offense of which the defendant is convicted, and any property, real or personal, used to facilitate
6 or intended to be used to facilitate the commission of the offense of which the defendant is
7 convicted. The property to be forfeited includes, but is not limited to, the following: 1022
8 Taylor Street, San Jose, California 95126.

9 22. If any of the property described above, as a result of any act or omission of the
10 defendant:

- 11 a. cannot be located upon the exercise of due diligence;
- 12 b. has been transferred or sold to, or deposited with, a third party;
- 13 c. has been placed beyond the jurisdiction of the court;
- 14 d. has been substantially diminished in value; or
- 15 e. has been commingled with other property which cannot be divided
16 without difficulty,

17 the United States of America shall be entitled to forfeiture of substitute property pursuant to Title
18 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section
19 982(b)(1).

20 CRIMINAL FORFEITURE ALLEGATION TWO: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. §
21 2461(c) - Criminal Forfeiture of Mail Fraud
Proceeds)

22 23. The allegations contained in Paragraphs One through Seven and Counts Four
23 through Six of this Indictment are hereby realleged and incorporated by reference for the purpose
24 of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title
25 28, United States Code, Section 2461(c).

26 24. Upon conviction of the offenses in violation of Title 18, United States Code,
27 Section 1341, set forth in Counts Four through Six of this Indictment, the defendant, Evelyn
28 Sineneng-Smith, shall forfeit to the United States of America, pursuant to Title 18, United States

1 Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real
2 or personal, which constitutes or is derived from proceeds traceable to the offenses, including:

3 a. a sum of money equal to the total amount of proceeds the defendant
4 obtained or derived from, directly or indirectly, from the violation.

5 25. If any property, real or personal, involved in the offense, and any property
6 traceable to such property involved the offense, as a result of any act or omission of the
7 defendant:

- 8 a. cannot be located upon the exercise of due diligence;
- 9 b. has been transferred or sold to, or deposited with, a third party;
- 10 c. has been placed beyond the jurisdiction of the court;
- 11 d. has been substantially diminished in value; or
- 12 e. has been commingled with other property which cannot be divided
13 without difficulty,

14 the United States of America shall be entitled to forfeiture of substitute property pursuant to Title
15 21, United States Code, Section 853(p).

16 CRIMINAL FORFEITURE ALLEGATION THREE: (18 U.S.C. § 982(a)(1) - Criminal
17 Forfeiture of Money Laundering Proceeds)

18 26. The allegations contained in Paragraphs One through Seven and Counts Nine and
19 Ten of this Indictment are hereby realleged and incorporated by reference for the purpose of
20 alleging forfeitures pursuant to Title 18, United States Code, Section 982(a)(1).

21 27. Pursuant to Title 18, United States Code, Section 982(a)(1), upon conviction of an
22 offense in violation of Title 18, United States Code, Section 1957, the defendant, Evelyn
23 Sineneng-Smith, shall forfeit to the United States of America any property, real or personal,
24 involved in such offense, and any property traceable to such property.

25 28. If any property, real or personal, involved in the offense, and any property
26 traceable to such property involved the offense, as a result of any act or omission of the
27 defendant:

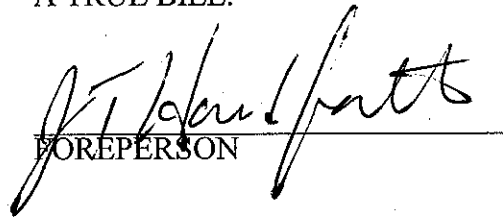
- 28 a. cannot be located upon the exercise of due diligence;

- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

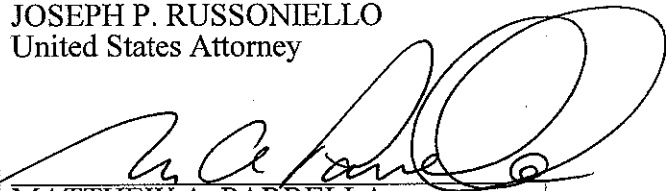
the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).


DATED: 7/14/10

A TRUE BILL.


 FOREPERSON

JOSEPH P. RUSSONIELLO
 United States Attorney


 MATTHEW A. PARRELLA
 Chief, CHIP Unit

(Approved as to form: 
 AUSA KNIGHT

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED
SEE ATTACHMENT
PENALTY: SEE ATTACHMENT
 Petty
 Minor
 Misdemeanor
 Felony

Name of District Court and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION 2:38

DEFENDANT - U.S.
EVELYN SINENENG SMITH
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIFORNIA
DISTRICT COURT NUMBER
CR 10 00414 RMW
PVT

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
ICE
 person is awaiting trial in another Federal or State Court, give name of court
 this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District
 this is a reprosecution of charges previously dismissed which were dismissed on motion of:
 U.S. ATTORNEY DEFENSE } SHOW DOCKET NO.
 this prosecution relates to a pending case involving this same defendant } MAGISTRATE CASE NO.
 prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under } CR 10 00414

Name and Office of Person Furnishing Information on this form JOSPEH P. RUSSONIELLO
 U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) SUSAN F. KNIGHT

DEFENDANT

IS NOT IN CUSTODY

- Has not been arrested, pending outcome this proceeding.
1) If not detained give date any prior summons was served on above charges
2) Is a Fugitive
3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
5) On another conviction } Federal State
6) Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No } If "Yes" give date filed

DATE OF ARREST Month/Day/Year

Or... if Arresting Agency & Warrant were not
DATE TRANSFERRED TO U.S. CUSTODY Month/Day/Year

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:
 SUMMONS NO PROCESS* WARRANT
Bail Amount: _____
If Summons, complete following:
 Arraignment Initial Appearance
Defendant Address: _____
Date/Time: _____ Before Judge: _____
Comments:

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

ATTACHMENT TO PENALTY SHEET
CR 10-00414-RMW
U.S.
v.
EVELYN SINENENG-SMITH

COUNTS ONE THROUGH THREE: Title 8, United States Code, Section 1324(a)(1)(A)(iv) & (B)(i) - Encouraging and Inducing Illegal Immigration for Private Financial Gain.

Penalties: 10 years imprisonment;
\$250,000 fine;
3 years supervised release;
\$100 special assessment.

COUNTS TWO THROUGH SIX: Title 18, United States Code, Section § 1341 - Mail Fraud

Penalties: 20 years imprisonment;
\$250,000 fine;
3 years supervised release;
\$100 special assessment.

COUNTS SEVEN AND EIGHT: Title 26, United States Code, Section 7206(1) - Willfully Subscribing to a False Tax Return.

Penalties: 3 years imprisonment;
\$100,000 fine;
1 year supervised release;
\$100 special assessment and cost of prosecution.

COUNT NINE AND TEN: Title 18, United States Code, Section 1957 - Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity.

Penalties: 10 years imprisonment
and/or fine of twice the criminally derived proceeds
3 years supervised release
\$100 special assessment