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DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
JI EON LEE and MELVIN DOUGLAS  
DAVIS,  
Defendant.

Criminal Case No. 09-00059  
  
**ORDER RE: MOTION FOR  
JUDGEMENT OF ACQUITTAL**

This matter is before the court on the Defendant Ji Eon Lee’s Motion for Judgment of Acquittal pursuant to Federal Rule of Criminal Procedure Rule 29(c). The Defendant contends that the evidence was insufficient to support a conviction for Count VI – Perjury of the Indictment. *See* Docket No. 95. For the reasons set forth below, the motion is **DENIED**.

**BACKGROUND**

On or about December 2, 2009, Ji Eon Lee (the “Defendant”) was indicted on five counts: Marriage Fraud (Count I) in violation of 8 U.S.C. § 1325(c); Perjury (Count II) in violation of 18 U.S.C. § 1621; False Statement (Count IV) in violation of 18 U.S.C. § 1001(a)(3); False Statement (Count V) in violation of 18 U.S.C. § 1001(a)(3) and Perjury (Count VI) in violation of 18 U.S.C. § 1621. The case proceeded to trial on October 19, 2010. On November 3, 2010, the jury sent the court a note, indicating they had reached an impasse and were unable to agree upon a verdict as to any of the counts. After consultation with counsel, the court delivered the *Allen* charge to the

1 jury on the morning of the 3<sup>rd</sup> and instructed them to resume deliberations. Later that same day,  
2 however, when it was clear the jurors were unable to reach a unanimous verdict on any count, the  
3 court found manifest necessity for a declaration of a mistrial.<sup>1</sup> *See* Docket No. 90.

#### 4 DISCUSSION

5 The Defendant now moves this court for judgment of acquittal pursuant to Federal Rule  
6 of Criminal Procedure 29 on Count VI. Specifically, Count VI states:

7 1. On or about July 16, 2008, in the District of Guam, the defendant herein,  
8 JI EON LEE, did submit a Form I-751 Petition to Remove Conditions on  
9 Residence, executed under penalty of perjury under the format of 28 U.S.C. § 1746.  
10 The U.S. Citizenship and Immigration Services (CIS) did require as a prerequisite  
11 to approval of said Petition, the JI EON LEE submit to an interview, under oath,  
12 concerning her qualifications for approval of said Petition.

13 2. It was material to the processing and approval of said Petition that the  
14 beneficiary of the Petition, JI EON LEE, truthfully answer the questions put to her  
15 by the authorized CIS interviewer.

16 3. On April 30, 2009, defendant was placed under oath by Vera S. Perez,  
17 an officer of the U.S. Citizenship and Immigration Services who was authorized by  
18 law to administer oaths and take testimony in connection with the enforcement of  
19 the immigration and nationality laws of the United States.

20 4. On April 30, 2009, defendant JI EON LEE did unlawfully and willfully,  
21 contrary to such oaths, state a material matter which she did not believe to be true,  
22 to-wit: that at the time she applied for a marriage license, she was living together  
23 with Melvin Douglas Davis at R-22<sup>2</sup> Ypao Condo, Tumon Heights. The aforesaid  
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25 <sup>1</sup> After the court declared a mistrial, the government orally moved for the dismissal of  
26 both the False Statement counts (Counts IV and V) with prejudice. The court granted the  
27 motion. *See* Docket No. 90.

28 <sup>2</sup> Throughout the trial there was some confusion as to whether Mr. Davis resided at  
R-2 or R-22, for purposes of this Order, they are found to be interchangeable and the reference

1 statement, as she then and there well know and believed was false in that at the  
2 time of her application for a marriage license, she was living at Alupang Cove,  
3 Tamuning.

4 ALL IN VIOLATION of Title 18, United States Code, Section 1621.

5 Docket No. 1, Indictment.

6 Rule 29 of the Federal Rules of Criminal Procedure provides that a defendant may move  
7 for a judgment of acquittal if the evidence is insufficient to sustain a conviction. The rule provides:

8 **(a) Before Submission to the Jury.** After the government closes its  
9 evidence or after the close of all the evidence, the court on the defendant's motion  
10 must enter a judgment of acquittal of any offense for which the evidence is  
11 insufficient to sustain a conviction. The court may on its own consider whether the  
12 evidence is insufficient to sustain a conviction. If the court denies a motion for a  
13 judgment of acquittal at the close of the prosecution's evidence, the defendant may  
14 offer evidence without having reserved the right to do so.

15 **(b) Reserving Decision.** The court may reserve decision on the motion,  
16 proceed with the trial (where the motion is made before the close of all the  
17 evidence), submit the case to the jury, and decide the motion either before the jury  
18 returns a verdict or after it returns a verdict of guilty or is discharged without  
19 having returned a verdict. If the court reserves decision, it must decide the motion  
20 on the basis of the evidence at the time the ruling was reserved.

21 **(c) After Jury Verdict or Discharge.**

22 **(1) Time for a Motion.** A defendant may move for a  
23 judgment of acquittal, or renew such a motion, within 14 days after  
24 a guilty verdict or after the court discharges the jury, whichever is  
25 later.

26 **(2) Ruling on the Motion.** If the jury has returned a guilty  
27 verdict, the court may set aside the verdict and enter an acquittal.  
28 If the jury has failed to return a verdict, the court may enter a  
judgment of acquittal.

**(3) No Prior Motion Required.** A defendant is not  
required to move for a judgment of acquittal before the court  
submits the case to the jury as a prerequisite for making such a  
motion after jury discharge.

24 Fed. R. Crim. P. 29.

25 The standard for a judgment of acquittal is the same regardless of when the motion is  
26 made. The court is to direct acquittal "if the evidence is insufficient to sustain a conviction."  
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to either one is to be deemed as reference to the other herein.

1 Fed.R.Crim.P. 29(a). The evidence is insufficient to sustain a conviction if, after viewing the  
2 evidence in the light most favorable to the government, no rational trier of fact could find the  
3 essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307,  
4 319 (1979).

5 Because the government does not need to rebut all reasonable interpretations of  
6 the evidence that would establish the defendant's innocence, or "rule out every  
7 hypothesis except that of guilt beyond a reasonable doubt" at the first step of  
8 *Jackson, id.* at 326, 99 S.Ct. 2781, a reviewing court may not ask whether a  
9 finder of fact could have construed the evidence produced at trial to support  
10 acquittal. Only after we have construed all the evidence at trial in favor of the  
11 prosecution do we take the second step, and determine whether the evidence at  
12 trial, including any evidence of innocence, could allow any rational trier of fact  
13 to find the essential elements of the crime beyond a reasonable doubt. *Id.* at 319,  
14 99 S.Ct. 2781.

15 *United States v. Nevils*, 598 F.3d 1158, 1164-1165 (9th Cir. 2010).

16 This court ruled on the sufficiency of the evidence at two points in the trial. After the  
17 close of the government's case, the Defendant initially moved for a judgment of acquittal. At  
18 that time, the court held that sufficient evidence had been adduced to sustain a conviction and  
19 denied the motion. Subsequently, at the conclusion of the trial, the Defendant renewed her  
20 motion for judgment of acquittal. The court again ruled that the evidence was sufficient to  
21 sustain a conviction and denied the motion.

22 In the present motion, the Defendant argues that there was insufficient evidence  
23 presented to the jury to prove the Defendant committed perjury as stated under Count VI of the  
24 Indictment. The interview which is the subject of Count VI was conducted under oath by Ms.  
25 Vera Perez ("Ms. Perez"), an Immigration Service Officer. At trial, Ms. Perez testified that she  
26 conducted an interview of the Defendant on April 30, 2009. She indicated that after the  
27 interview, a transcript was prepared for the Defendant's signature. The document admitted as  
28 Exhibit 13 was the transcription of the transcript. It contained the following information:

Q. Were you and Mr. Davis living together when you applied for your marriage  
license:

A. (Hesitant) Yes.

Q. Do you recall what that address was?

1           A.       R-22 Ypao Condo, Tumon Heights.

2       *See* Exhibit 13, p. 13-3.

3           Specifically, the Defendant claims that there was no proof that the misstatement she may  
4       have made regarding her cohabitation with the co-defendant, Melvin Douglas Davis (“Mr.  
5       Davis”) at the time of her marriage application, was material in the processing of the I-751  
6       Petition. The jury was instructed that in order for a statement to be material, “the statement had  
7       a natural tendency to influence, or was capable of influencing, the actions of CIS.” Docket No.  
8       80, Jury Instruction 23. The Defendant claims the government failed to show that her statement  
9       regarding where she resided when she applied for a marriage license had any tendency to  
10      influence, or was capable of influencing, the agency’s decisions and activities.

11          At trial, Ms. Perez testified that where the parties had been living prior to the marriage,  
12      as well as after their marriage, was a material fact that could influence the outcome of whatever  
13      adjudication the statements concerned. Ms. Perez testified that in her review of a petition, she  
14      looks for whether the indicia of a bona fide marriage such as cohabitation exists. Here, the jury  
15      could have found the Defendant’s statement concerning whether she actually lived with her  
16      husband, Mr. Davis was a statement that “had a natural tendency to influence, or was capable of  
17      influencing, the actions of CIS.” Docket No. 80, Jury Instruction 23.

18          Secondly, the Defendant claims that there was no direct proof that what she may have  
19      said was actually false. The jury was only presented with Exhibit 1, which was the marriage  
20      license captioned “Government of Guam Department of Public Health and Social Services  
21      Government of Guam U.S. Standard License and Certificate of Marriage.” There was no  
22      “application” presented for the jury to review, nor was there any testimony providing the date  
23      that the Defendant submitted her application. Defendant references 10 Guam Code Ann. § 3220  
24      in support of her position, which provides:

25               **§ 3220. Marriage Registration.**

26                   (a) A record of each marriage performed on Guam shall be filed with the  
27                   Territorial Registrar of Vital Statistics as provided in this section.

28                   (b) The officer who issues the marriage license shall prepare the license

1 and certificate on the form prescribed and furnished by the Officer of Vital  
2 Statistics upon the basis of information obtained from the parties to be married,  
3 who shall attest to the information by their signatures.

4 (c) Every person authorized by the laws of Guam to perform a marriage  
5 shall certify the fact of marriage and file the record of such marriage with the  
6 Office of Vital Statistics within ten (10) days after the ceremony. This certificate  
7 shall be signed by the witnesses, and another signed copy shall be signed by the  
8 witnesses, and another signed copy shall be given to the parties marrying.

9 (d) The officer issuing marriage licenses shall complete and forward to  
10 the Territorial Registrar of Vital Statistics, on or before the fifteenth (15) day of  
11 each month, copies of the applications and licenses filed with him during the  
12 preceding calendar month.

13 (e) The Director shall accept, for the purpose of recordation, certified  
14 copies of records of marriages performed outside Guam in which one (1) or both  
15 parties are residents of Guam.

16 10 GCA § 3220.

17 The Defendant argues that the only date of consequence to the determination of the  
18 charge is the date she applied, if she applied, for a marriage license. Since there was no actual  
19 application moved into evidence and no witness testified that at the time of the marriage  
20 application, they were not residing together, the court must acquit the Defendant. The court  
21 does not agree. The government presented evidence at trial that indicated that the Defendant  
22 and Mr. Davis had never lived together, at any time, whether at the time a marriage application  
23 was filled out, or when a marriage license was issued. There was evidence introduced that  
24 showed that Mr. Davis had lived at R-2 Ypao Villa Condos since 2004; the Defendant had lived  
25 at 505 Pia Marine since 2003, and on March 18, 2006, she entered into a two-year lease for 121  
26 Alupang Cove, Tamuning. In her lease agreement at Alupang Cove, the Defendant indicated  
27 that there would be four occupants, herself and her three children. *See* Exhibits 8 and 9. There  
28 was no mention of Mr. Davis, listed as her husband residing there. A month after they were

1 married, Mr. Davis took out a loan from Citibank, he stated that he was single. *See* Exhibit 10.  
2 In addition, witness, Christine Jin testified that the Defendant told her that she had paid Mr.  
3 Davis to marry her for a green card.

4 Viewing the evidence in the light most favorable to the government, as required under a  
5 Rule 29 motion, the court finds that the government presented evidence such that a jury could  
6 find the Defendant committed perjury. *See Jackson*, 443 U.S. at 319 (holding that in  
7 considering a motion for judgment of acquittal, the court must view the evidence presented in  
8 the light most favorable to the government). “We review the sufficiency of evidence to support  
9 a criminal conviction by viewing the evidence in the light most favorable to the prosecution and  
10 determining whether ‘any rational trier of fact could have found the essential elements of the  
11 crime beyond a reasonable doubt.’” *United States v. Garza*, 980 F.2d 546, 552 (9th Cir.1992)  
12 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

### 13 CONCLUSION

14 The court finds that the government presented evidence sufficient to support a jury’s  
15 guilty verdict on the charge of Perjury. Accordingly, the court **DENIES** the Defendant’s motion  
16 as set forth herein.

17 **IT IS SO ORDERED.**



18 /s/ Frances M. Tydingco-Gatewood  
19 Chief Judge  
20 Dated: Dec 09, 2010