

NOV - 5 2003



UNITED STATES DEPARTMENT OF COMMERCE  
Bureau of Industry and Security  
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

**COPY**

RECEIVED  
FRONT DESK  
2003 NOV - 7 P 6:15  
J-BALTIMORE, MD

Mr. Xinjian Yi  
Huazhong University of Science and Technology  
East Block, 2-91  
Wuhan, People's Republic of China  
430074

Dear Mr. Yi:

The Bureau of Industry and Security, United States Department of Commerce ("BIS") has reason to believe that you ("Xinjian Yi") violated the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act"),<sup>2</sup> on three occasions. Specifically, BIS charges that Xinjian Yi committed the following violations:

**Charge 1 (15 C.F.R. § 764.2(d) - Conspiracy to Violate the Export Administration Regulations)**

Beginning in or about June 1998 and continuing through in or about July 1998, Xinjian Yi conspired and acted in concert with others, known and unknown, to violate the Regulations. The purpose of the conspiracy was to export thermal imaging cameras from the United States to the People's Republic of China without a BIS export license. The thermal imaging cameras were items subject to the Regulations and covered by export control classification number ("ECCN") 6A003.b. As set forth in Section 742.4 of the Regulations, a BIS export license was required

---

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred from 1998 through 1999. The Regulations governing the violations at issue are found in the 1998 and 1999 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998-1999)). The 1998 and 1999 Regulations are substantially the same as the 2003 Regulations, which establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508, and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222, which has been extended by a Presidential Notice of August 7, 2003 (Fed. Reg. 47833 (August 11, 2003)), has continued the Regulations in effect under IEEPA.



before the thermal imaging cameras could be exported to the People's Republic of China. To accomplish the conspiracy, the conspirators, including Xinjian Yi, participated in a scheme to have a co-conspirator purchase the cameras from a U.S. distributor, have the U.S. distributor ship the cameras to a destination in the United States, and then have a co-conspirator carry the cameras by hand to the People's Republic of China without a BIS export license. In doing so, Xinjian Yi committed one violation of Section 764.2(d) of the Regulations.

**Charge 2 (15 C.F.R. § 764.2(a) - Exporting Thermal Imaging Cameras to the People's Republic of China without the Required BIS Export License)**

In connection with the conspiracy referenced in Charge 1, in or about July 1998, Xinjian Yi exported or caused the export of the three thermal imaging cameras, items covered by ECCN 6A003.b of the Regulations, from the United States to the People's Republic of China without a license from BIS as required by Section 742.4 of the Regulations. In doing so, Xinjian Yi committed one violation of Section 764.2(b) of the Regulations.

**Charge 3 (15 C.F.R. § 764.2(g) - False Statement to an Office of Export Enforcement Special Agent in the Course of an Investigation)**

On or about July 7, 1999, in connection with an ongoing BIS, Office of Export Enforcement ("OEE") investigation into the unauthorized export of three thermal imaging cameras, items subject to the Regulations, from the United States to China by a co-conspirator, Xinjian Yi represented to an OEE Special Agent that the U.S. distributor would not repair one of the thermal imaging cameras even though the thermal imaging camera was not in proper working condition when it was received from the U.S. distributor. This representation was false and misleading as the U.S. distributor had offered to repair the camera. In doing so, Xinjian Yi committed one violation of Section 764.2(g)(1) of the Regulations.

Accordingly, Xinjian Yi is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000;<sup>3</sup>

Denial of export privileges; and/or

Exclusion from practice before BIS.

---

<sup>3</sup> See 15 C.F.R. § 6.4(a)(2).

If Xinjian Yi fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If Xinjian Yi defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to Xinjian Yi. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each charge in this letter.

Xinjian Yi is further notified that he is entitled to an agency hearing on the record if he files a written demand for one with his answer. (Regulations, Section 766.6). Xinjian Yi is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent him. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Xinjian Yi have a proposal to settle this case, Xinjian Yi or his representative should transmit the offer to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Xinjian Yi's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of Xinjian Yi's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Melissa B. Mannino  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Xinjian Yi  
Charging Letter  
Page 4

Melissa B. Mannino is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through her. She may be contacted by telephone at (202) 482-5301.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Menefee". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark D. Menefee  
Director  
Office of Export Enforcement

Enclosure

NOV - 5 2003



UNITED STATES DEPARTMENT OF COMMERCE  
Bureau of Industry and Security  
Washington, D.C. 20230

**COPY**

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Ms. Yu Yi  
Huazhong University of Science and Technology  
South Building #5  
Room 414  
Wuhan, People's Republic of China  
430074

RECEIVED  
FRONT DESK  
2003 NOV - 7 P 6:13  
ALJ-BALTIMORE, MD

Dear Ms. Yi:

The Bureau of Industry and Security, United States Department of Commerce ("BIS") has reason to believe that you ("Yu Yi") violated the Export Administration Regulations (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979 (the "Act"),<sup>2</sup> on three occasions. Specifically, BIS charges that Yu Yi committed the following violations:

**Charge 1 (15 C.F.R. § 764.2(d) - Conspiracy to Violate the Export Administration Regulations)**

Beginning in or about June 1998 and continuing through in or about July 1998, Yu Yi conspired and acted in concert with others, known and unknown, to violate the Regulations. The purpose of the conspiracy was to export thermal imaging cameras from the United States to the People's Republic of China without a BIS export license. The thermal imaging cameras were items subject to the Regulations and covered by export control classification number ("ECCN")

---

<sup>1</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred from 1998 through 1999. The Regulations governing the violations at issue are found in the 1998 and 1999 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1998-1999)). The 1998 and 1999 Regulations are substantially the same as the 2003 Regulations, which establish the procedures that apply to this matter.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508, and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222, which has been extended by a Presidential Notice of August 7, 2003 (Fed. Reg. 47833 (August 11, 2003)), has continued the Regulations in effect under IEEPA.



6A003.b. As set forth in Section 742.4 of the Regulations, a BIS export license was required before the thermal imaging cameras could be exported to the People's Republic of China. To accomplish the conspiracy, the conspirators, including Yu Yi, participated in a scheme to have a co-conspirator purchase the cameras from a U.S. distributor, have the U.S. distributor ship the cameras to a destination in the United States, and then have a co-conspirator carry the cameras by hand to the People's Republic of China without a BIS export license. In doing so, Yu Yi committed one violation of Section 764.2(d) of the Regulations.

**Charge 2 (15 C.F.R. § 764.2(b) - Aiding and Abetting the Unauthorized Export of Thermal Imaging Cameras to the People's Republic of China)**

In connection with the conspiracy referenced in Charge 1, in or about June and July 1998, Yu Yi aided and abetted the unauthorized export of three thermal imaging cameras, items covered by ECCN 6A003.b of the Regulations, from the United States to the People's Republic of China without a license from BIS as required by Section 742.4 of the Regulations. Yu Yi purchased the cameras from a U.S. distributor and then had the cameras shipped to Massachusetts for export to the People's Republic of China. In doing so, Yu Yi committed one violation of Section 764.2(b) of the Regulations.

**Charge 3 (15 C.F.R. § 764.2(g) - False Statement to an Office of Export Enforcement Special Agent in the Course of an Investigation)**

On or about April 20, 1999, in connection with an ongoing BIS, Office of Export Enforcement ("OEE") investigation into the unauthorized export of three thermal imaging cameras, items subject to the Regulations, from the United States to China by a co-conspirator, Yu Yi represented to an OEE Special Agent that the U.S. distributor would not repair one of the thermal imaging cameras that she purchased even though the thermal imaging camera was not in proper working condition when it was received from the U.S. distributor. This representation was false and misleading as the U.S. distributor had offered to repair the camera. In doing so, Yu Yi committed one violation of Section 764.2(g)(1) of the Regulations.

Accordingly, Yu Yi is hereby notified that an administrative proceeding is instituted against her pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000;<sup>3</sup>

---

<sup>3</sup> See 15 C.F.R. § 6.4(a)(2).

Yu Yi  
Charging Letter  
Page 3

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Yu Yi fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If Yu Yi defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to Yu Yi. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each charge in this letter.

Yu Yi is further notified that she is entitled to an agency hearing on the record if she files a written demand for one with her answer. (Regulations, Section 766.6). Yu Yi is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent her. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Yu Yi have a proposal to settle this case, Yu Yi or her representative should transmit the offer to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Yu Yi's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of Yu Yi's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Melissa B. Mannino  
Room H-3839  
United States Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Yu Yi  
Charging Letter  
Page 4

Melissa B. Mannino is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through her. She may be contacted by telephone at (202) 482-5301.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark D. Menefee".

Mark D. Menefee  
Director  
Office of Export Enforcement

Enclosure



**UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON D.C. 20230**

**In the Matter of:**

**YU YI,  
XINJIAN YI,**

**RESPONDENTS**

**Docket No. 03-BIS-11  
Docket No. 03-BIS-12**

**RECOMMENDED DECISION AND ORDER AND ORDER GRANTING  
AGENCY'S RECOMMENDATION FOR IMPOSITION OF CIVIL PENALTY  
ASSESSMENT**

On November 5, 2003, the Bureau of Industry and Security (BIS or Agency) filed formal Complaints against Xinjian Yi and Yu Yi charging each with three (3) separate violations of the Export Administration Regulations (EAR) (15 C.F.R. Parts 730-74)<sup>1</sup> issued pursuant to the Export Administration Act of 1979 (Act), as amended (50 U.S.C. §§ 2401-420 (1991 and Supp. 2001)).<sup>2</sup> Upon motion by the parties, both cases were consolidated into a single proceeding. On March 12, 2004, BIS filed a Motion for Summary Decision regarding the first and second charges filed against both Respondents. By Order issued on April 28, 2004, the Undersigned Administrative Law Judge granted the Agency's Motion for Summary Decision (Summary Decision Order). In so doing, it

---

<sup>1</sup> The regulations are currently codified in the Code of Federal Regulations (CFR) at 15 C.F.R. Parts 730-74 (2004). The regulations governing the violations at issue are found in the 1998 version of the CFR. The 1998 regulations and the degree to which they pertain to this matter are substantially the same as the 2004 version.

<sup>2</sup> From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which has been extended by successive Presidential Notices, continued the Regulations in effect under the International Economic Powers Act (50 U.S.C. §§ 1701-706 (1994 & Supp. V. 1999)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since that time, the Act has been in lapse and the President, through

was held that the Agency met its burden to prove the respective charges that Xinjian Yi: (1) conspired to violate the Export Administration Regulations and (2) unlawfully exported thermal imaging cameras to the People's Republic of China (PRC) and that Yu Yi: (1) conspired to violate the Export Administration Regulations and (2) aided and abetted the unauthorized export of thermal imaging cameras to the People's Republic of China. At that time, a hearing was set for May 18, 2004 to hear the final remaining charges.

On or about May 10, 2004, the Agency notified this office of its intent to withdraw the remaining third charge filed against each Respondent. The parties requested to cancel the scheduled hearing and sought to file briefs regarding final sanctions. On May 19, 2004, an Order was issued to cancel the scheduled hearing and to provide the parties an opportunity to file briefs on the issue of sanctions.

On June 24, 2004, Respondents Xinjian Yi and Yu Yi filed their Brief on Proposed Civil Penalty (Respondent's Brief) with nine (9) attached exhibits. Respondent's Brief argued for the mitigation of any civil monetary penalty and submitted that the appropriate penalty should be the denial of Respondents' export privileges for a reasonable period of time (one year period of time for each charge). On June 29, 2004, the Agency filed its Recommendation for Imposition of Administrative Penalties Against Xinjian Yi and Yu Yi (Agency's Brief) with six (6) exhibits. The Agency seeks the maximum civil penalty assessment of \$22,000.00 and a ten (10) year period of time for denial of export privileges for each Respondent.

---

Executive Order 13222 of August 17, 2001, as extended by subsequent Notices (the last being found at 68 Fed. Reg. 47833 (August 7, 2003)), has continued the regulations in effect under IEEPA.

As a result of the Agency's decision to withdraw the remaining charges, the issuance of the April 28, 2004 Summary Decision Order has effectively decided the legal issues in this matter. However, it should be noted that no credibility determinations have been made regarding the parties and no witness testimony has been received. I have carefully reviewed the record in its entirety and specifically, the parties' briefs and exhibits concerning the award of sanctions. I find that the Agency has sustained its burden for the award of sanctions as it proposed. Respondents' arguments are well pled but fall short of providing the necessary legal documentation to overcome or mitigate the Agency's proposed sanctions. As such, the Agency is HEREBY awarded the full civil penalty assessment of \$22,000.00 and a ten (10) year period of time for denial of export privileges as filed against *each* Respondent. The civil penalty assessment is based on the following.

#### CHARGING LETTER

The final charges against the Respondents are as follows:

Xinjian Yi

Charge 1 Conspiracy to Violate the Export Administration Regulations -  
15 C.F.R. § 764.2 (d).

Beginning on or about June 1998 and continuing through and in or about July 1998, Xinjian Yi conspired and acted in concert with others, known and unknown, to violate the Regulations. The purpose of the conspiracy was to export thermal imaging cameras from the United States to the People's Republic of China without a BIS export license. The thermal imaging cameras were items subject to the Regulations and covered by export control classification number ("ECCN") 6A003.b. As set forth in Section 742.2 of the Regulations, a BIS export license was required before the thermal imaging cameras could be exported to the People's Republic of China. To accomplish the conspiracy, the conspirators, including Xinjian Yi, participated in a scheme to have a co-conspirator purchase the cameras from a US distributor, have the US

distributor ship the cameras to a destination in the United States, and then have a co-conspirator carry the cameras by hand to the People's Republic of China without a BIS export license. In doing so, Xinjian Yi committed one violation of Section 764.2(d) of the Regulations.

Charge 2 Exporting Thermal Imaging Cameras to the People's Republic of China

Without the Required BIS Export License – 15 C.F.R. § 764.2 (a).

In connection with the conspiracy referenced in Charge 1, in or about July 1998, Xinjian Yi exported or caused the export of the three thermal imaging cameras, items covered by ECCN 6A003.b of the Regulations, from the United States to the People's Republic of China without a license from BIS as required by Section 742.4 of the Regulations. In doing so, Xinjian Yi committed one violation of Section 764.2(b) of the Regulations.

Yu Yi

Charge 1 Conspiracy to Violate the Export Administration Regulations –

15 C.F.R. § 764.2 (d).

Beginning in or about June 1998 and continuing through and in or about July 1998, Yu Yi conspired and acted in concert with others, known and unknown, to violate the Regulations. The purpose of the conspiracy was to export thermal imaging cameras from the United States to the People's Republic of China without a BIS export license. The thermal imaging cameras were items subject to the Regulations and covered by export control classification number ("ECCN") 6A003.b. As set forth in Section 742.2 of the Regulations, a BIS export license was required before the thermal imaging cameras could be exported to the People's Republic of China. To accomplish the conspiracy, the conspirators, including Yu Yi, participated in a scheme to have a co-conspirator purchase the cameras from a US distributor, have the US distributor ship the cameras to a destination in the United States, and then have a co-conspirator carry the cameras by hand to the People's Republic of China without a BIS export license. In doing so, Yu Yi committed one violation of Section 764.2 (d) of the Regulations.

Charge 2 Aiding and Abetting the Unauthorized Export of Thermal Imaging

Cameras to the People's Republic of China – 15 C.F.R. § 764.2 (b).

In connection with the conspiracy referenced in Charge 1, in or about July 1998, Yu Yi aided and abetted the unauthorized export of the three thermal

imaging cameras, items covered by ECCN 6A003.b of the Regulations, from the United States to the People's Republic of China without a license from BIS as required by Section 742.4 of the Regulations. In doing so, Yu Yi committed one violation of Section 764.2(b) of the Regulations.

#### FINDING OF FACTS

The findings of facts, unless otherwise noted, were previously determined by the issuance of the April 28, 2004 Summary Decision Order. They are essentially as follows: <sup>3</sup>

1. Xinjian Yi is a Chinese citizen who lives in Wuhan, People's Republic of China ("PRC").
2. At the times relevant hereto, Mr. Yi was a professor in the Department of Opto-electronic Engineering at Huazhong University of Science and Technology in Wuhan, PRC.
3. Yu Yi is the daughter of Xinjian Yi. See the July 21, 1999 letter from Yu Yi, which is attached hereto as Exhibit E.
4. At the times relevant hereto, Yu Yi was employed in Dallas, Texas. Ex.E.
5. In 1998, Xinjian Yi contacted Yu Yi and requested her assistance in purchasing thermal imaging cameras ("cameras") from Accurate Locators, Inc., a U.S. company. Exs. D and E.
6. Pursuant to her father's request, Yu Yi contacted Accurate Locators and purchased one thermal imaging camera. Exs. D and E.
7. Yu Yi told Accurate Locators to send the camera to her sister, Yong Yi, who lived in Boston, Massachusetts. Exs. D and E.
8. Yu Yi wired payment for the camera to Accurate Locators. Ex. E.

9. The funds used by Yu Yi to pay for the camera were transferred to her from the PRC. Ex. E.
10. Accurate Locators shipped the camera to Yong Yi's address in Boston. Exs. D and E.
11. Xinjian Yi traveled from the PRC to Boston on or about June 1998 and stayed with his daughter, Yong Yi. Exs. B and E.
12. After arriving in Boston, Xinjian Yi took possession of the camera that had been shipped to his daughter's house in Boston. Exs. B and E.
13. Xinjian Yi then asked Yu Yi to buy two more cameras from Accurate Locators. Ex. E.
14. Pursuant to her father's request, Yu Yi purchased two additional thermal imaging cameras for him from Accurate Locators. Ex. E.
15. Yu Yi told Accurate Locators to send the two cameras using funds that had been wired to her from the PRC. Ex. E.
16. Yu Yi wired the company payment for the two cameras using funds that had been wired to her from the PRC. Ex. E.
17. Xinjian Yi received all three cameras and on or about July 1998 and traveled back to the PRC with the three cameras. Ex. B.
18. Yu Yi believed the cameras were for use by Xinjian Yi for some research he was conducting at the University in the PRC. Ex. E.

---

<sup>3</sup> Unless otherwise noted the following designations are used; (1) exhibits referenced are those attached with the Agency's Motion for Summary Decision, (2) any reference made to Respondents' exhibits (Opposition Motion to BIS's Motion for Summary Decision) will be designated as R-1, R-2, etc.

19. The cameras were items subject to the regulations and classified under Export Control Classification Number 6A003.b. A copy of the licensing determinations is attached hereto as Ex. F.

20. A license from BIS was required for the export of the cameras from the United States to the PRC. Ex. F.

21. No License from BIS was obtained for the export of the cameras from the United States to PRC. Ex. B.

In addition to the above, the following findings of fact have been determined based on the parties' recent filings.

22. Yu Yi now resides in the PRC. Respondent's Brief at 5.

23. The thermal imaging cameras in question remain in the PRC. Agency's Brief, Ex. 1.

24. [ ] was denied an export license for the purchase of a [ ] thermal imaging camera in 2000 (subsequent to the unlawful export in this matter) based on the determination by the Department of Commerce that "this export would be detrimental to U.S. national security interests." Agency's Brief, Ex. 2.

25. Yu Yi's March 31, 1999 United States bank statement contained a total amount of \$38,570.89 U.S. dollars. Agency's Brief, Ex. 6. A deposit certification in the amount of \$5,040.75 U.S. dollars was made by Yu Yi to the Bank of China on May 20, 2003. Respondent's Brief, Ex. 4.

## CONCLUSIONS OF LAW

1. Xinjian Yi and Yu Yi conspired to violate the Export Administration Regulation found under 15 C.F.R. § 764.2 (d), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401- 420 (1991 & Supp. 2001)). They participated in a scheme to export thermal imaging cameras which are subject to the regulations and covered by an export control classification number (ECCN) requiring a BIS export license for export to the People's Republic of China.
2. Xinjian Yi violated the Export Administration Regulation found under 15 C.F.R. § 764.2 (a), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401- 420 (1991 & Supp. 2001)) by exporting thermal imaging cameras to the People's Republic of China without having an export license as required by section 764.2(a).
3. Yu Yi violated the Export Administration Regulations found under 15 C.F.R. § 764.2 (b), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401- 420 (1991 & Supp. 2001)) by aiding and abetting Xinjian Yi with the unauthorized export of thermal imaging cameras to the People's Republic of China.

## DISCUSSION

As held by the April 28, 2004 Summary Decision Order, it was determined that the Agency met its burden by the submission of reliable, probative, and relevant evidence with regard to the respective two (2) charges filed against Respondents in that no genuine issue of material fact was present and the Agency was entitled to judgment as



a matter of law. Following the Agency's subsequent withdrawal of the respective final third charge and the filing of the parties' briefs concerning the award of sanctions, this matter is now ripe for issuance of the Recommended Decision and Order.

Respondents argue and submit exhibits to support the view that they acted without knowledge and intent which inadvertently led to violations of the EAR. Respondents contend that the purchase of the thermal imaging cameras was based on the ability to get similar cameras at a cheaper price in the United States. The thermal imaging cameras were to be used for a university research project to develop a system for detecting and analyzing overheating problems in power distribution lines. For this reason Xinjian Yi contacted his daughter, Yu Yi, who at that time resided in the United States, to assist him with the purchase and delivery of the thermal imaging cameras from the United States to the People's Republic of China (PRC). Yu Yi's involvement is simply argued to be that of a dutiful daughter who sought no benefit, other than the gratitude of her father.

The Agency contends that Respondents' lack credibility and noted, "a pattern of untrue statements" allegedly made during the investigation of this matter. While no determination is made regarding Respondents' credibility, the Report of Investigative Activity (Respondent Brief, Ex. 3) indicated that Yu Yi was "combative and evasive." More importantly, however, Respondents have failed to provide support for their arguments, including, but not limited to, whether or not the university research project was ever conducted or actually contemplated. At this point, the record reveals no documentary evidence, and Respondents have not provided, other than arguments, that Respondents' actions were simply innocent and inadvertent.

Respondents further argue that the ultimate destination (the PRC) for the thermal imaging cameras does not raise any terrorism concerns because the PRC is not listed as a state sponsor of terrorism by the United States. Respondents support their claim, in part, by submitting documentation to show that thermal imaging cameras, arguably of similar quality to those at issue, are widely available in the PRC. Respondents contend that even if requested, an export license would likely have been granted and that no United States national security interest would have been challenged.

The Agency disagrees and submits documentation that shows: [ ]  
[ ] made a request in November 1999 for  
an export license for a [ ] [ ] thermal imaging camera [ ]  
[ ] This request was rejected by the Department  
of Commerce as “detrimental to U.S. national security interests.” While Respondents  
have submitted numerous documents that show the apparent availability of similar  
thermal imaging cameras in the PRC, the fact remains that the United States Department  
of Commerce and the Bureau of Industry and Security have classified the thermal  
imaging cameras in question under an ECCN requiring an export license determination  
and have denied such request as “detrimental to U.S. national security interests.”

[ ]

] ]

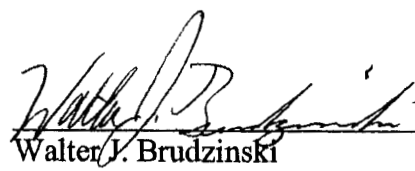
Finally, Respondents contend that the inadvertent violation of the EAR was simply the result of inexperience by novice persons who were unaware of export laws and regulations. Respondents do not have any prior history of export violations and

argue that they never attempted to hide or conceal their identities or actions. Respondents' further argue an inability to pay stating that Xinjian Yi is now retired and living off his pension and Yu Yi is unemployed and raising a family. Based on all of the above, Respondents seek to totally mitigate or in the alternative, suspend or defer the monetary civil penalty assessment while seeking an export period of denial for one (1) year, (citing In the Matter of: Bassem A. Alhalabi, 03-BIS-03, June 24, 2003 (settlement agreement denying Respondent's export privileges for a one (1) year period of time for the export of a thermal imaging camera to Syria)).

#### CONCLUSION

Respondents' filings have been well written and argued throughout this proceeding. However, Respondents fail to provide in the record the necessary legal documentation to support mitigation of the proposed civil penalty assessments. Simply put, the record does not support the Respondent's arguments to allow mitigation of the proposed civil penalty assessments. The record indicates that Yu Yi was not totally cooperative during the investigation, that the financial documentation submitted is incomplete and Yu Yi's bank statements and deposit documentation raises other questions rather than provide answers. The record also lacks any affidavits or sworn statements, including documentation of Xinjian Yi's proposed research. With regard to the cited settlement agreement for Alhalabi, no weight is given to the sanction for this matter. WHEREFORE, Respondents' supporting documentation is not sufficient to overcome the Agency's proposal to individually assess a civil penalty assessment of \$22,000.00 and a ten (10) year period of time for denial of export privileges.

[Section on "Recommended Sanction" redacted]



Walter J. Brudzinski  
Administrative Law Judge

Done and dated this 25<sup>th</sup> day of August, 2004 at  
New York, New York



BIS charged that Xinjian Yi: (i) in or about June 1998 through in or about July 1998, conspired with others to export from the United States to the People's Republic of China ("PRC") thermal imaging cameras, which were classified under export control classification number ("ECCN") 6A003 and controlled for national security reasons, without a BIS export license in violation of Section 764.2(d) of the Regulations; (ii) in or about July 1998, exported the national security controlled thermal imaging cameras to the PRC without the required license in violation of Section 764.2(a) of the Regulations; and (iii) in or about July 1999, made a false statement to an Office of Export Enforcement ("OEE") Special Agent about the thermal imaging cameras during the course of the OEE investigation, in violation of Section 764.2(g) of the Regulations.

BIS charged that Yu Yi: (i) in or about June 1998 through in or about July 1998, conspired with others to export from the United States to the PRC thermal imaging cameras, which were classified under ECCN 6A003 and controlled for national security reasons, without a BIS export license in violation of Section 764.2(d) of the Regulations; (ii) aided and abetted the unlicensed export of the national security controlled thermal imaging cameras to the PRC in violation of Section 764.(b) of the Regulations; and (iii) in or about April 1999, made a false statement to an OEE Special Agent about the thermal imaging cameras in the course of the OEE investigation, in violation of Section 764.2(g) of the Regulations.

These cases were consolidated pursuant to a motion filed by the parties.

On March 12, 2004, BIS filed a Motion for Summary Decision on two of the three charges filed against each Respondent.<sup>3</sup> Respondents opposed the Motion. On April 28, 2004,

---

<sup>3</sup> BIS did not move for summary decision as to the false statement charge against each Respondent.

the Administrative Law Judge (“ALJ”) granted BIS’s Motion for Summary Decision, holding that Xinjian Yi and Yu Yi had each violated section 764.2(d) of the Regulations by conspiring to export thermal imaging cameras to the PRC without the required license. He also found that Xinjian Yi had violated Section 764.2(a) of the Regulations by making the unlicensed export of the thermal imaging cameras, and that Yu Yi had violated Section 764.2(b) by aiding and abetting the unlicensed export to the PRC. Specifically, the ALJ held that BIS “met it’s [sic] burden by the submission of reliable, probative and relevant evidence . . . in that no genuine issue of material fact was present and [BIS] was entitled to judgment as a matter of law.”<sup>4</sup> ALJ’s Recommended Decision and Order at 8.

In June 2004, the parties filed their briefs for the proposed civil penalties. On August 25, 2004, the ALJ issued his Recommended Decision and Order, recommending that each Respondent be fined \$22,000 and that each Respondent’s export privileges under the Regulations be denied for 10 years, as proposed by BIS. Specifically, the ALJ found that the “record does not support the Respondent’s [sic] arguments to allow mitigation of the proposed civil penalty assessments.” ALJ’s Recommended Decision and Order at 11.

Pursuant to Section 766.22 of the Regulations, the ALJ’s Recommended Decision and Order has been referred to me for final action. In the Respondents’ responses to the ALJ’s Recommended Decision and Order, the Respondents do not challenge the ALJ’s factual and legal conclusions with respect to each of the charges. Rather, the Respondents argue that the ALJ’s civil penalty assessment is unjustified and should be mitigated.

---

<sup>4</sup> After the issuance of the ALJ’s Order granting BIS’s Summary Decision Motion, BIS withdrew the remaining false statement charges against each Respondent.

Based upon my review of the entire record, I find that the evidence supports the ALJ's findings of fact and conclusions of law regarding each of the above-referenced charges. I also find that the penalties recommended by the ALJ are appropriate given the sensitivity of the cameras involved, the country of ultimate destination, the concerted actions of the Respondents, the inconsistent and incomplete information provided by the Respondents, and the absence of strong or persuasive mitigating factors. The Respondent's concerted actions to export national security-controlled items to the PRC without the required export license from BIS is a significant aggravating factor. BIS has determined that this type of transaction is detrimental to U.S. national security interests, and has, in fact, denied a license for the export of similar items to the same PRC end-user at issue. That significant aggravating factor combined with inconsistent statements made by the Respondents during the course of the investigation and the incomplete financial information provided cannot be overcome by the mitigating factors alleged by the Respondents.

IT IS HEREBY ORDERED,

FIRST, that a civil penalty of \$22,000 is assessed against each Xinjian Yi and Yu Yi, which shall be paid to the Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Xinjian Yi and Yu Yi will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as further described in the attached Notice.



THIRD, that, for a period of 10 years from the date on which this order takes effect, Xinjian Yi of Wuhan, People's Republic of China, and Yu Yi of Wuhan, People's Republic of China, their successors or assigns and, when acting for or on behalf of them, their officers, representatives, agents, or employees (individually referred to as "a Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

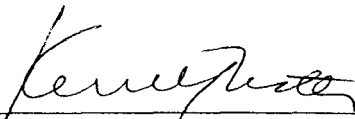
- A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;

- B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession, or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed, or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, “servicing” means installation, maintenance, repair, modification, or testing.

FIFTH, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

SIXTH, that this Order shall be served on the Denied Persons and on BIS, and shall be published in the *Federal Register*. In addition, the ALJ's Recommended Decision and Order, except for the section with the heading "Recommended Sanction" and the export licensing information<sup>5</sup> on pages 7 and 10, shall be published in the *Federal Register*.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the *Federal Register*.



---

Kenneth I. Juster

Under Secretary of Commerce  
for Industry and Security

Dated: September 27, 2004

---

<sup>5</sup> The export licensing information on pages 7 and 10 of the ALJ Recommended Decision is protected by the confidentiality provisions of Section 12(c) of the Act.