

RAB:AMC
F.#2010R00532

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

COMPLAINT

- against -

(T. 18, U.S.C., §§ 371
and 3551 et seq.)

OFER BITON,

Defendant.

- - - - - X

EASTERN DISTRICT OF NEW YORK, SS:

ROLAND D. FERIA, being duly sworn, deposes and states that he is a Special Agent with Federal Bureau of Investigation, duly appointed according to law and acting as such.

There is probable cause to believe that in or about and between April 2010 and June 2010, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant OFER BITON, together with others, did knowingly and willfully conspire to subscribe to as true, under penalty of perjury under Title 28, United States Code, Section 1746, one or more false statements with respect to material facts in an application, affidavit and other documents required by the immigration laws and regulations prescribed thereunder, to wit: United States Citizenship and Immigration Services Form I-526, Petition by Alien Entrepreneur, a memorandum in support of the I-526 Petition and the exhibits attached thereto, in violation of

Title 18, United States Code, Section 1546(a). And, in furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendant OFER BITON, together with others, committed and caused to be committed, overt acts as described herein.

(Title 18, United States Code, Section 371 and 3551 et seq.)

The source of your deponent's information and the grounds for his belief are as follows:^{1/}

3. I am familiar with the facts and circumstances set forth below based on my own first-hand knowledge, as well as from discussions with, and reading the reports of, other law enforcement officers, and through my review of the documents and other evidence.

4. Section 203(b)(5) of the Immigration and Nationality Act permits aliens to apply for United States visas if they invest in commercial enterprises for the purpose of creating employment for United States citizens or other immigrants lawfully authorized to be employed in the United States. To apply for status as an alien entrepreneur, a person must submit to the United States Citizenship and Immigration

^{1/} Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware.

Services ("CIS") a CIS Form I-526, Petition by Alien Entrepreneur (the "I-526 Petition").

5. On or about June 3, 2010, a lawyer for OFER BITON, on behalf of OFER BITON, submitted to the United States Citizenship and Immigration Services ("CIS") an I-526 Petition for BITON (the "BITON I-526 Petition"), a memorandum in support of the I-526 Petition (the "BITON I-526 Memorandum"), and exhibits. The BITON I-526 Memorandum indicated that on May 7, 2010, BITON had invested \$500,000 in a business located in the United States, and stated:

Mr. Biton obtained captial for his \$500,000 investment from funds in his HSBC Premier checking account Of those funds, \$400,000 were from a personal loan that a family friend [Witness #1], had given to Mr. Biton, and \$100,000 from funds that he had accumulated from his employment, income, savings and investments.

6. The exhibits submitted with the BITON I-526 Petition included (i) a receipt from a title company indicating the receipt of \$500,000 on May 7, 2010 in the title company's trust account, and (ii) an HSBC Premier Checking account ("BITON's HSBC Account") statement in the name of OFER BITON that indicated that \$500,000 had been wired to the title company's trust account.

7. The BITON I-526 Memorandum further explained the source of \$400,000 invested by BITON:

The bulk of the funds for Mr. Biton's investment come from a personal loan of \$400,000 that Mr. Biton's friend [Witness #1], has lent to him. [Witness #1] is the Chairman and Chief Executive Officer of [Company A] and the funds lent to Mr. Biton come from [Witness #1's] personal accounts.

8. Exhibit number 6 to the BITON I-526 Petition is a promissory note dated April 28, 2010 signed by OFER BITON. The promissory note states that BITON owed Witness #1 \$400,000 and that the "entire principal and accrued interest shall be due and payable on May 1, 2012." The promissory note was notarized by a notary public in the State of Florida.^{2/}

9. Exhibit numbers 8 and 9 to the BITON I-526 Petition included income tax returns for Witness #1 and information related to Witness #1's company, Company A. Witness #1's income tax returns reported income far in excess of the \$400,000 that OFER BITON claimed he received from Witness #1.

10. The BITON I-526 Petition also contained a certification stating, "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct." The certification is signed and dated May 7, 2010.

² According to American Express records, OFER BITON traveled from LaGuardia Airport, located in Queens, New York to Fort Lauderdale, Florida on Jet Blue Airways on April 28, 2010.

11. Witness #1 stated that the \$400,000 that Witness #1 gave to OFER BITON was not a personal loan. Rather, just prior to giving the money to BITON, Witness #1 received the \$400,000 from another individual, Coconspirator #1. Prior to this transfer, Witness #1 stated that BITON asked Witness #1 to take the \$400,000 from Coconspirator #1 and then wire the same funds to BITON so that it would appear that Witness #1 was loaning Witness #1's money to BITON. BITON explained to Witness #1 that Coconspirator #1 did not want to provide income tax returns to the government. BITON also told Witness #1 that the \$400,000 he would receive included money belonging to another individual, Witness #2.^{3/} The \$400,000 was thus not a loan from Witness #1 to BITON, and Witness #1 stated that Biton neither repaid Witness #1 the \$400,000 by May 1, 2012 (as specified in the April 28, 2010 promissory note), nor has BITON repaid any of the \$400,000 or interest to Witness #1 in the time since. Witness #1 further stated that BITON never provided him with a promissory note for \$400,000.

12. Records from a Wachovia Bank account used by Witness #1 ("Witness #1's Account") indicate that on or about May 3, 2010, Witness #1's Account received a wire transfer for \$320,000 from a company owned by Coconspirator #1 ("Company B"). Witness #1's Account records also show that on or about May 6,

³ Witness #2 is now deceased.

2010, a check for \$80,000 from Coconspirator #1, which was drawn against an account at JP Morgan Chase in the name of Coconspirator #1, was deposited in Witness #1's Account. Finally, Witness #1's Account records indicate that \$320,000 and \$80,000 were wire transferred from Witness #1's Account to BITON's HSBC Account on or about May 4, 2010 and May 6, 2010, respectively.

13. An individual, Witness #3 stated that on or about May 4 to May 6, 2010, another individual, Witness #4, caused three checks totaling \$380,000, in amounts of \$150,000, \$135,000 and \$95,000, to be deposited into an account controlled by Coconspirator #1. Witness #4 stated that BITON and Coconspirator #1 demanded that Witness #4 make the transfer of funds because BITON and Coconspirator #1 claimed that such funds were owed to BITON by Witness #4. Thus, at least \$380,000 of the above-mentioned \$400,000 that BITON claimed to be a loan from Witness #1 was, in fact, money Witness #4 transferred to BITON via Coconspirator #1.

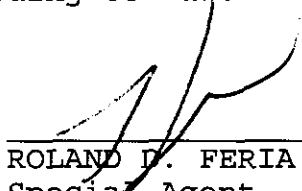
WHEREFORE, your deponent respectfully submits that there is probable cause to believe that OFER BITON, together with others, did knowingly and willfully conspire to subscribe to as true, under penalty of perjury under Title 28, United States Code, Section 1746, one or more false statements with respect to material facts in an application, affidavit and other documents

required by the immigration laws and regulations prescribed thereunder, to wit: United States Citizenship and Immigration Services Form I-526, Petition by Alien Entrepreneur, a memorandum in support of the I-526 Petition and the exhibits attached thereto, in violation of Title 18, United States Code, Section 1546(a). And, in furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendant OFER BITON, together with others, committed and caused to be committed, among others, the following:

OVERT ACTS

- a. On or about April 28, 2010, OFER BITON traveled from the LaGuardia Airport, located in Queens, New York to Fort Lauderdale, Florida.
- b. On or about April 28, 2010, OFER BITON caused to be notarized a promissory note for \$400,000, in connection with the BITON I-526 Petition.
- c. On or about May 7, 2010, OFER BITON caused \$500,000 to be wire transferred to a title company's trust account.
- d. On about June 3, 2010, a lawyer for OFER BITON submitted to CIS the BITON I-526 Petition, the BITON I-526 Memorandum and exhibits.

Your deponent respectfully requests that the defendant
OFER BITON be dealt with according to law.



ROLAND D. FERIA
Special Agent
Federal Bureau of Investigation

Sworn
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UNITED
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JUDGE
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