

DATE: October 23, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-10509

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Ray E. Blank, Department Counsel

#### **FOR APPLICANT**

#### ***Pro Se***

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On June 23, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision--security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended ) (Directive). Applicant requested a decision on the written record. On March 31, 2006, Administrative Judge Shari Dam denied Applicant's request for a security clearance. Applicant submitted a timely appeal pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

The Board interprets Applicant's appeal as contending that the Administrative Judge's decision is arbitrary, capricious, and contrary to law. The Administrative Judge made the following findings of fact: Applicant is a PhD in engineering who works for a federal contractor. He had been employed by the Chinese government from 1985 to 1987. He was born in the Peoples Republic of China (PRC) and became a naturalized citizen of the United States in 2001. His wife was born in the PRC. She is a permanent resident alien in the U.S. and has applied for U.S. citizenship. Applicant's parents were born in the PRC but reside in the U.S. with Applicant, where they are seeking permanent resident alien status. Applicant has a brother who is a permanent resident alien of the U.S. and has applied for citizenship. He has one other brother and two sisters who are citizens of the PRC and who reside there. The Administrative Judge found that Applicant petitioned the U.S. in May 2005 for resident alien status for them. Additionally, Applicant's parents-in-law are citizens and residents of the PRC. The Administrative Judge found that they "would like to immigrate to the United States after [Applicant's] wife obtains citizenship." None of Applicant's relatives are agents of the PRC. "Applicant telephones his siblings and in-laws a couple of times a year, usually at the holidays. He does not provide any financial assistance to them and does not own property there." The Administrative Judge found that the PRC is a state with a poor human rights record that has traditionally been hostile to the U.S. The PRC is "among the most active information collectors and participants in industrial espionage."

Applicant asserts that two matters contained in the findings of fact are erroneous. First, he states that he never worked for the PRC government, that from 1985 to 1987 he was an engineer at Shanghai University of Science and Technology. Second, he states that he applied for resident alien status on behalf of his siblings in March 2002 rather than May 2005 and that the petition for his brother has been approved. A review of the record evidence indicates that the Judge's finding that Applicant worked for the PRC government from 1985 to 1987 is supported by substantial record evidence. Regarding the dates of Applicant's attempts to obtain resident alien status for his siblings, the record is inconclusive.

However, even if the Judge's findings regarding these dates is error, the error is harmless in that the timing of Applicant's petitions to obtain resident alien status for his siblings was not a material fact in the Judge's security clearance decision. Applicant's appeal assertion that his brother's petition for resident alien status has recently been approved is a new matter, which the Board cannot consider. Directive ¶ E3.1.2.9.

We have examined the record and the Administrative Judge's application of law to the facts of the case and conclude that her decision is supported by substantial evidence and is neither arbitrary, capricious, nor contrary to law. Thus, the Administrative Judge did not err in denying Applicant a clearance.

#### **IV. Order**

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Jeffery D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board