



## **SYNOPSIS**

Applicant is a 33 year-old naturalized United States citizen, born in the People's Republic of China (PRC), then living with her family in Hong Kong and moving to the U.S. in 1991. Applicant's parents and two brothers are citizens of the People's Republic of China (PRC) residing in Hong Kong. None of these family members belong to, participate in, or are active with any government agency of the PRC or Hong Kong. Applicant's strong attachment to the United States and minimal ties to Hong Kong and the PRC makes it unlikely that she would respond favorably to any efforts to persuade her to act against United States interests. Mitigation has been shown. Clearance is granted.

## **STATEMENT OF THE CASE**

On March 7, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on April 26, 2007. Applicant requested a clearance decision based on a hearing record.

The case was initially assigned to another Administrative Judge to conduct a hearing and issue a written decision on June 14, 2007, but the case was reassigned to this Administrative Judge on June 18, 2007. A Notice of Hearing was issued to the parties on August 6, 2007, and the hearing was held on August 24, 2007.

At the hearing, Department Counsel offered three documentary exhibits (Exhibits 1 through 3) and no witnesses were called. Applicant offered 20 documentary exhibits (Exhibits A - T) and offered her own testimony and that of her husband. The record was left open until September 7, 2007, to allow Applicant and Department Counsel to offer additional documentation regarding certain issues of the PRC. Applicant offered a memorandum with nine attachments which has been identified collectively as Exhibit U, and Department Counsel offered a cover letter and two documents, which have been identified collectively as Exhibit 4. Both were submitted in a timely manner. I have entered Exhibit 4 for the Government and Exhibit U for Applicant. The transcript (Tr) was received on September 10, 2007.

## **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B and Guideline C of the Directive. The SOR contains two allegations, 1.a. and 1.b., under Guideline B, and one allegation, 2.a., under Guideline C. Applicant admitted SOR allegation 2.a., and she denied 1.a. and 1.b. The admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 33 years old, employed as a Software Engineer by a defense contractor, and she seeks a security clearance for that position. She received a Bachelor of Science degree in Computer Science in 1995, and a Master's Degree in Math in 1997, both from a United States university.

Applicant was born in the PRC in 1973, and she and her family moved to Hong Kong in 1986. In 1991, at the age of 18, she moved to the United States to finish high school and eventually get her advanced college degrees, and she has lived here continuously since 1991.

Applicant's husband is a United States citizen by birth, who is currently serving as an active duty Major in the U.S. Air Force. They have been married for almost eight years, and she and her husband have twin daughters, born in 2004, who are natural born United States citizens.

Applicant became a naturalized U.S. citizen in January 2006. She introduced Exhibit L to explain why it took her so long to be eligible to become a U.S. citizen. The primary difficulty was because she had to move each time her husband received transfer orders, and thus she was placed at the back of another waiting line. She applied for U.S. citizenship as soon as she was able.

#### **Paragraph 1 (Guideline B - Foreign Influence)**

1.a. Applicant's father and mother are citizens of the PRC, and they reside in Hong Kong. Applicant's father, 58 years old, is a physician employed by a hospital in Hong Kong and her mother, 60, is a retired physician. Applicant describes her contact with her parents as casual, "typically three to four times a month from five to 10 minutes by phone or on the internet webcam."

1.b. Applicant's two brothers are citizens of the PRC, and they reside in Hong Kong. One brother is a computer programmer for a bank in Hong Kong, and her other brother is a musician and composer. Applicant's contact with her brothers happen several times a year by email.

Exhibit E includes statements from Applicant's parents and brothers. None of them has ever worked for or been associated with the Governments of the PRC, Hong Kong, or the United Kingdom, and none of them are or have been members of the Communist party. All of Applicant's family members in Hong Kong have applied for and retain British National Overseas passports rather than Hong Kong SAR passports that are issued by Hong Kong.

Applicant testified that she has no known foreign assets, and she introduced Exhibits H, I, and J to show that she and her husband have considerable net worth in the United States, including her home and retirement accounts.

Applicant introduced Exhibit C, which contains a Recognition Award and a Letter of Appreciation from her current employer for her outstanding contributions. Exhibit D includes five

character letters including one from her immediate supervisor, one from the principal director of her employer, and three from Air Force officers who have known during the last nine years. They strongly recommend Applicant as loyal to the U.S. and highly trustworthy.

Since Applicant moved to the United States in 1991, she has visited her family in Hong Kong on three occasions in 2001, 2002, and in 2005 to visit her family.

When he was questioned as to what he would do if a representative of the PRC threatened any member of her family if she did not cooperate with the government, she testified, "I think I will be deeply grieved, but I will not compromise anything, and I will by all means resist that and report that to authorities if I can." (Tr at 98).

Finally, Applicant testified that she intends to remain in the United States for the rest of her life, and she has no plans to ever return permanently to Hong Kong or the PRC (Tr at 100).

### **Paragraph 2 (Guideline C - Foreign Preference)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because she has acted in such a way as to indicate a preference for another country over the United States.

2.a. The Government is concerned because, as of November 2, 2006, Applicant possessed a current passport, issued by the United Kingdom. Applicant has not used it since she became a United States citizen.

On July 8, 2007, Applicant submitted to the British Embassy Consular Section a "Declaration of Renunciation of British National (Overseas) status" form with the supporting documents, including her cancelled British National (Overseas) Passport, with the right front cover torn off to make it invalid, as she had been instructed (Exhibit R).

An issue was raised at the hearing as to whether the PRC considers Chinese nationals, who live abroad and become citizens of a country other than the PRC, no longer PRC citizens. Both parties offered some conflicting evidence on this point (Exhibits U and 4). However, a ruling on that issue is not relevant because of the following: Applicant never considered herself a citizen of the PRC, because when she left Hong Kong in 1991 it was under the control of Great Britain; when she became a U.S. citizen she renounced any other citizenship; and the only passport, other than from the U.S., that she ever held was from Great Britain, and she renounced her British citizenship and returned her British passport.

### **Current Status of the PRC**

Since Applicant's parents and brothers are citizens of the PRC, it is important to consider the status of the PRC at this time.

The PRC, the most populous country in the world, is economically powerful, and is an important trading partner of the United States. It is run by the Communist Party which controls all aspects of the PRC government. It has strong military forces, and has its own foreign-policy. Although there has been some cooperation, there has been much more conflict with the United States in the past. The PRC has an extremely large army, a sophisticated defense establishment, and space capability. The PRC has launched satellites, has ballistic missiles, has nuclear arms, and nuclear bombs. Its diplomatic and military dispute with the Republic of China (Taiwan), foreshadows a possible military conflict, which the United States opposes as a resolution of the conflict. The PRC has an abysmal human rights record, which includes arbitrary killings; detention or incarceration without notice in mental facilities; torture; arbitrary arrest, detention or exile; no right to a public, fair trial; a politically controlled judiciary; lack of due process; restrictions on free speech, on religious freedom, on freedom of travel, on freedom of assembly; and no rights of privacy - family, home or correspondence.

The PRC engages in espionage against the United States through an extensive network of businesses, personnel, and specific programs designed to acquire advanced U.S. military technology. One approach is to covertly conduct espionage by personnel from government ministries, commissions, institutes, and military industries, independently of the PRC intelligence services. This is believed to be the major method of PRC intelligence activity in the United States. It also tries to identify ethnic Chinese in the United States who have access to sensitive information, and sometimes is able to enlist their cooperation in illegal technology information transfers.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

### **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

## CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the following with respect to Guidelines B and C:

### **(Guideline B - Foreign Influence)**

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant's relatives are citizens of the PRC, which could create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet her burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. This Applicant has done.

In reviewing the Disqualifying Conditions (DC) I find that DC 7. (a) applies, contact with foreign family members, who are citizens and residents in a foreign country, if that contact creates heightened risk of foreign exploitation, pressure or coercion.

Under Mitigating Conditions (MC) I have determined that MC 8. (b) applies as I find no conflict of interest because Applicant has such deep and longstanding relationships and loyalties, that any conflicts can be expected to be resolved in favor of the U.S. The factors that I have considered in applying MC 8. (b) and in reviewing Applicant under the "whole person concept" include: the fact that Applicant has lived in the U.S. since 1991, approximately half her life, she is married to an active duty U.S. Air Force Major, she has twin daughters who are solely U.S. citizens, she received all of her college training in the United States, she has established a successful career here, she introduced very powerful letters of recommendation from individuals in private industry and the U.S. military, she and her husband have significant financial assets in the U.S., and finally her self proclaimed positive feelings for the U.S.

After considering all of the evidence of record on Guideline B, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR .

### **(Guideline C - Foreign Preference)**

Guideline C is based on actions taken by an individual that indicate a preference for a foreign country over the United States. Applicant's retention of her British passport raises foreign

preference (Guideline C) concerns. At the time the SOR was issued, DC 10. (a), the exercise of the privilege of foreign citizenship could be argued to apply because (1) she retained her British passport. I conclude that since Applicant never used her passport, once she became a United States citizen, and she ultimately revoked her foreign passport, MC 11. (c) and (e) apply to this case.

Accordingly, at this time it is clearly consistent with national security to grant Applicant a security clearance.

**FORMAL FINDINGS**

**Paragraph 1. Guideline B: FOR APPLICANT**

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

**Paragraph 2. Guideline C: FOR APPLICANT**

Subparagraph 2.a.: For Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul  
Administrative Judge