

KEYWORD: Foreign Influence

DIGEST: Applicant is a 33 year-old naturalized United States citizen, born in the People’s Republic of China (PRC). Applicant’s grandmother and brother are citizens and residents of the PRC, but she does not have a close relationship with them, Her parents, with whom she has close and continuing relationship, now reside in the United States, and her husband is a United States citizen. The evidence establishes that Applicant is not vulnerable to foreign influence. By mitigating these foreign influence security concerns, Applicant has demonstrated that it is clearly consistent with the national interest to grant or continue her security clearance. Clearance is granted.

CASENO: 06-18700.h1

DATE: 05/22/2007

DATE: May 22, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-18700
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

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Applicant is a 33 year-old naturalized United States citizen, born in the People's Republic of China (PRC). Applicant's grandmother and brother are citizens and residents of the PRC, but she does not have a close relationship with them, Her parents, with whom she has close and continuing relationship, now reside in the United States, and her husband is a United States citizen. The evidence establishes that Applicant is not vulnerable to foreign influence. By mitigating these foreign influence security concerns, Applicant has demonstrated that it is clearly consistent with the national interest to grant or continue her security clearance. Clearance is granted.

### **STATEMENT OF THE CASE**

On November 21, 2006, 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 filed a notarized Response to the allegations set forth in the SOR, dated December 11, 2006, and she requested a hearing before a DOHA Administrative Judge. On February 8, 2007, the case was initially assigned to another Administrative Judge, but it was then reassigned to this Administrative Judge on February 20, 2007, to conduct a hearing. Pursuant to formal notice, dated March 2, 2007, a hearing was conducted on March 28, 2007.

At the hearing, Department Counsel offered 10 documentary exhibits (Government Exhibits 1- 10) and no witnesses were called. Applicant offered four documentary exhibits (Exhibits A-D) and offered her own testimony. The transcript (Tr) was received on April 13, 2007.

### **FINDINGS OF FACT**

The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members and foreign travel. The SOR contains four allegations, 1.a., through 1.d., under Guideline B. Applicant admitted all of the SOR allegations. 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 admitted documents, and testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is a 33 year old employee of a defense contractor that wants her to have a security clearance. She was born in the PRC and first came to the United States in 1991, at the age of 17. She became a naturalized United States citizen in 1995.

Applicant's was married from 1991 to 1996, and she has been remarried since 2005. Her current husband is a PRC born, naturalized, United States citizen. Applicant has no children.

Applicant received a Bachelor of Science Degree in Computer Science in 1990 from United States university, and she is working toward a Masters Degree. She maintains a 3.9 Grade Point Average while working full time.

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

The Government alleges that Applicant is ineligible for clearance because she has immediate family members or people to whom she may be bound by affection or obligation, who are not citizens of the United States, or may be subject to duress.

Applicant's grandmother and brother are citizens and residents of the PRC. Applicant's grandmother is 92 years old. She has never been employed outside of the home. Her brother is unemployed, he takes care of his grandmother, and he is studying English in preparation for immigrating to the United States. Neither of them ever had any affiliation with the PRC Government. Applicant only talks to them by telephone one or two times a year. Her relationship is not close to them.

Applicant's parents are PRC citizens. They both have resident alien status from the U. S., and they reside here with Applicant. Her mother moved to the United States in 2005 and her father in 2006. Both parents are retired. Applicant's father was a high school math teacher and her mother was a nurse. Neither of her parents ever worked for, or had any affiliation with, the PRC Government. Applicant's father receives a pension of approximately \$300 a month and her mother gets \$100 a month, which go to support her brother and grandmother.

Applicant's mother petitioned the Government in October 2003, to allow her brother to immigrate to the United States.

Since Applicant came to the United States, she has traveled to the PRC on three occasions 1993, 1997, and her last visit in 2002. The primary reason for these visits was to see her parents.

Applicant was never employed in the PRC. She does not have any financial interest in the PRC. She is the sole owner of a condominium in the United States. Applicant also testified that she has voted in the last three U.S. elections since she became a citizen, and she plans to remain in the United States for the rest of her life.

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

Since Applicant's grandmother and brother are citizens and residents 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 (Exhibits 6 and 8).

### **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 Applicant, I conclude the following with respect to Guideline B:

Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance under Guideline B (Foreign Influence), because Applicant's grandmother and brother are citizens and residents of the PRC. The citizenship and residency of Applicant's family members creates 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. As Applicant's immediate family members are citizens of and reside in the PRC, a country which is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that these family members do not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002.)

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 her. This Applicant has done.

In reviewing the Disqualifying Conditions (DC) I find that DC (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 of coercion.

I have reviewed the overall record and the totality of the evidence, and considered: the lack of PRC government involvement of Applicant's family, currently and in the past; the limited contact with Applicant and her grandmother and brother; the fact that her parents now live in the United States, and her husband is a United States citizen and resident; her history since coming to the United States and living here almost half of her life, attending two universities and receiving one degree while working on a second one; and her strong feelings concerning this country. Based on this, I have determined that her family members in the PRC do not constitute an unacceptable security risk. Mitigating Condition (MC) (b), there is no conflict because the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest, applies to this case. MC (c) also applies because the contact with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

After considering all of the evidence of record on Guideline B, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, she would resist it.

**FORMAL FINDINGS**

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

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: 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