

DATE: February 20, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 01-01197

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a native of the People's Republic of China (PRC), entered the United States (US) in 1983 on sponsorship documentation bearing an English translation of his last name consistent with a Cantonese pronunciation rather than the correct Mandarin dialect. [\(U\)](#) For consistency purposes, Applicant used this last name on documents presented to acquire US citizenship, US passport and a security clearance. On official forms for the US Government and in interviews before US agents, he identified male family members by this same surname, although these relatives had never adopted that spelling. Applicant deliberately omitted from his May 1999 security clearance application (SF 86) his possession until December 1996 of a PRC passport, and since April 1999 of a US passport, and his foreign travel to Canada and the PRC. Nor was he candid during investigative interviews about the status and/or activities of his parents, including his role in his father's violation of US immigration laws. Personal conduct concerns persist because of his repeated misrepresentations. Furthermore, the PRC citizenship and residency of immediate family members present an unacceptable risk of foreign influence. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated June 27, 2002, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign influence (guideline B) because of the foreign residency and/or citizenship of close family members (parents, brother, aunt and uncle, and in-laws) and an unpaid obligation of \$20,000.00 USD to the PRC for college tuition, and on personal conduct (guideline E) related to deliberate misrepresentations made to the US Government or agent thereof concerning his possession of US and PRC passports, his foreign travel, his surname and the name of his spouse, and the status and/or activities of his and his spouse's relatives.

On August 6, 2002, Applicant responded to the allegations set forth in the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on October 22, 2002, and pursuant to formal notice dated October 25, 2002, a hearing was scheduled for November 18, 2002. At the hearing, which was held as scheduled, the Government submitted ten exhibits and the Applicant eight exhibits, all of which were entered into the record. Testimony was taken from the Applicant and two of his coworkers. With the receipt on November 27, 2002, of the transcript of the hearing, the case is ripe for a decision.

### FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of same, I render the following findings of fact:

Applicant is a 41-year-old engineer who has worked for his current employer, a US defense contractor, since early December 1995. An expert in probabilistic mechanics, Applicant held an interim secret clearance which was recently withdrawn pending final adjudication of his clearance.

Applicant was born in the PRC in 1961 into a relatively wealthy family by that nation's standards. Applicant's paternal grandfather had owned a charcoal factory as well as a three-story home. Applicant lived in this home from birth, as his father, a high school chemistry teacher, inherited the home. In April 1965, Applicant's parents had another son.

Circa 1966, communist revolutionary guards forcibly invaded, ransacked and took possession of the family's home. During a search for items of value, the guards found letters from Applicant's maternal grandparents, naturalized citizens of Hong Kong. Applicant's mother, a homemaker, was accused of being a spy and beaten, but allowed to remain with the family. Most of their possessions were taken and the family was forced to share the house with three other families from whom the communist government collected rent.

With his father's earnings from his teaching job insufficient to support the family, Applicant's mother went to work in a government-owned factory. About two and a half years later, her job was transferred to another factory in a distant province. Applicant's mother relocated to the new area while Applicant and his brother remained with their father. (2) During the ten years that his mother worked in the distant province, she visited her husband and children once a year. In the early 1980s, Applicant's mother obtained a visa to travel to Hong Kong after her father paid off a PRC official. Shortly after her arrival in Hong Kong, her parents commenced the process for her naturalization, and Applicant's mother became a Hong Kong resident citizen.

Educated in the local schools in the PRC, Applicant matriculated in a local university. Tuition fees (about \$20,000.00 US for the four years) were paid for by the government in exchange for Applicant agreeing to accept on graduation the job assigned to him by the government or repaying tuition costs. (3) At the university, Applicant received instruction about the Communist Party and the evils of capitalism. During his junior year in college, he participated in a one-month military training program.

Circa 1981, Applicant started the process to obtain a visa for graduate study in the United States. While Applicant was a student at the university, he was issued in December 1981 a PRC passport valid for five years. (4) In late February 1983, a maternal uncle, who was working and living in the United Kingdom, filed an affidavit of support with the US INS, sponsoring Applicant's study in the United States. On that affidavit, the uncle spelled Applicant's last name consistent with an English translation from a Cantonese dialect rather than an accurate translation from Mandarin Chinese. In May 1983, Applicant earned his degree from the PRC university. Informed by the PRC government that he was expected in September 1983 to report to work as an assistant professor at a construction institute, Applicant continued with his plans to study in the United States without notifying the PRC officials that he had no intent to take the job. In August 1983, Applicant was issued a nonimmigrant F-1 student visa by the United States government, which was valid for study to February 1984. Seven days later, he entered the United States on his PRC passport. After he was safely in the United States, he notified the Chinese construction institute through his father in the PRC that he had no intent to accepting a position as assistant professor at the university.

In an effort to keep his paperwork consistent, once in the United States Applicant adopted the English spelling of his

surname as it appeared on the sponsorship affidavit filed by his uncle, and he requested that his brother and father use the same English spelling as well on any documentation presented to, and in connection with any visits to, the United States.

In September 1983, Applicant matriculated in a public university in the US. His mother, who was residing in Hong Kong, paid for his tuition and expenses for his first year of graduate study. Applicant was awarded a scholarship for subsequent years. While pursuing his master's degree, Applicant met his future spouse, then a citizen of the PRC as well, who had come to the United States in 1981. A few months after Applicant earned his M.S. degree in mechanics and materials science in 1986, they were married in the US. In August 1989, they had their first child, a daughter born to them in the United States. A son was later born to Applicant and his spouse in the United States in June 1994.

From September 1986 to August 1989, Applicant pursued doctoral studies in engineering mechanics at a private university in the United States. In December 1986, his PRC passport was renewed for another five years. In December 1991, the PRC passport was extended yet again until December 1996. Applicant traveled to the PRC on this passport for two weeks during the October/November 1994 time frame.

From September 1989 to February 1992, Applicant was a postdoctoral research fellow at another university in the US. In that capacity, he performed research for the United States military in the area of materials and probabilistic mechanics. Applicant applied in 1990 for an H-1 visa allowing him to work in the United States, which was supported by a former academic advisor and by a professor familiar with his postdoctoral research. Granted a work visa, Applicant in arch 1992 went to work as a project leader with a commercial firm in the defense sector.

Circa August 1992, Applicant's brother came to the United States to study chemical engineering under Applicant's sponsorship. On the affidavit supporting his brother's graduate study in the United States, Applicant knowingly provided an improper translation of his brother's surname to be consistent with the spelling Applicant had adopted for himself since entering the US in 1983. Applicant's brother never adopted that spelling, and he entered the United States on a PRC passport issued under his correct last name as properly translated into English from Mandarin Chinese.

In mid-December 1992, Applicant's father, who had recently retired from his position as a chemistry teacher in the PRC, was granted a B-2 visa from the United States authorizing a three-month stay in the US. In January 1993, Applicant's father entered the United States on a PRC passport, issued under his name as correctly translated into English from Mandarin Chinese. <sup>(5)</sup> The passport bore a notation indicating an alternative spelling of Applicant's father's last name matching the last name by which Applicant was known in the US. In March 1993, Applicant applied for an extension of his father's visa to stay in the United States, which was approved in May 1993. Applicant's father continued to live with Applicant in the United States after his visa expired in mid-December 1993. Aware that his father remained in the United States illegally, Applicant did not want his father to return to the PRC where he would be alone. <sup>(6)</sup>

Circa February 1993, Applicant's mother came to the United States from Hong Kong. She stayed with Applicant and his family until August 1993 when she moved in with Applicant's brother. When Applicant's brother moved to Canada to pursue a degree in computer science in August 1995, she accompanied him. In September 1996, Applicant's mother returned to the PRC for about seven months. While in the PRC, she resided in Applicant's father's home with her sister and her sister's husband. <sup>(7)</sup> In May 1997, Applicant's mother went back to Canada to live with Applicant's brother. Applicant's father continued to stay with Applicant in the United States until September 1997, when he returned to the PRC. <sup>(8)</sup>

In early December 1995, Applicant commenced work for his current employer. A permanent resident of the United States only since Fall 1993, Applicant in January 1996 applied for United States naturalized citizenship, a prerequisite for gaining a security clearance needed for his job. On his application, submitted under the name he had been using since he entered the United States, Applicant listed his foreign travel to the PRC in 1994. Applicant's application was not approved.

Applicant allowed his PRC passport to expire in December 1996 without renewal, as he already had a "green card" in the United States.

Applicant's spouse having acquired United States naturalized citizenship in April 1997, Applicant in July 1998 reapplied for naturalization, again under the name he had been using since he entered the United States in 1983. On his Application for Naturalization completed on July 10, 1998, Applicant responded "No" to questions posed designed to assess his eligibility for United States citizenship, including question 15.a. ["Have you ever: a. knowingly committed any crime for which you have not been arrested."]. His application was approved, and in mid-March 1999, Applicant took the oath to renounce all foreign allegiances, to support and defend the United States Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the United States if required. With the acquisition of US naturalized citizenship, Applicant's PRC citizenship was automatically revoked. In April 1999, Applicant was issued a United States passport, valid for ten years.

On May 21, 1999, Applicant executed a security clearance application (SF 86) under the name used on all his official documentation since he entered the United States. In response to whether he had ever used any other name, Applicant listed only an anglicized first name and did not reveal the correct translation of his surname. With regard to relatives and associates, thinking it would be too confusing to explain the different spelling of his last name from other male members of the family, Applicant listed his father, brother and paternal uncle as having the same surname as him, even though these relatives had not adopted this spelling of the family name. Applicant disclosed the PRC residency and citizenship of his father and the Canadian residency and PRC citizenship of his brother. Aware his parents had not lived together since about 1970 and that his mother was living in Canada, Applicant gave his father's address in the PRC as her current residence as he thought it easier than explaining the complicated story about their separation. Confused about his mother's citizenship given the transfer of Hong Kong to China, Applicant indicated his mother was a citizen of the PRC. Applicant failed to list his two children on his SF 86 as he thought he only had to report foreign citizen relations.

On his SF 86, Applicant intentionally did not reveal that he had a United States passport, as he thought it would expedite the security clearance process.<sup>(9)</sup> Nor did he disclose that he had a valid PRC passport to as recently as December 1996, which was well within the seven-year scope of the inquiry ["15. In the last 7 years, have you had an active passport that was issued by a foreign government."], or that he traveled to the PRC in October 1994 and to Canada yearly. Applicant attributes the omission of the PRC passport and foreign travel to innocent mistake-miscalculation of the dates of the passport's validity and misreading of the foreign travel inquiry to require disclosure only of travel on US Government orders. Given Applicant traveled to the PRC on this passport as recently as October 1994 and he has never failed to recall that trip, even listing it on his application for US naturalization, which was reviewed by an INS agent in February 1999, I am not persuaded that he thought his foreign passport had expired more than seven years before he completed the SF 86. Nor am I convinced that Applicant misread the inquiry regarding foreign travel, which is straightforward ["16. Have you traveled outside the United States **on other than** official U.S. Government orders in the last 7 years?" (emphasis added)].

Within days of executing his SF 86, Applicant traveled to Europe on his United States passport. In July 1999, Applicant was granted an interim secret security clearance for his defense-related duties. Circa November 1999, Applicant traveled to Canada to see his mother and brother.

During the first three months of 2000, Applicant was interviewed by the Defense Security Service (DSS) on five separate occasions about his personal history and foreign relatives. On January 7, 2000, Applicant informed a DSS agent of his spouse's nickname and the identities of his in-laws in the PRC, which he claimed were omitted from his SF 86 due to "oversight." Candid about his contacts with his in-laws, Applicant explained he met them in 1989 when they came to the US for a visit. He and his spouse then visited with them on their trip to the PRC in 1994, and his spouse sponsored her parents' stay with them in the US from November 1997 to November 1998. Applicant described contact by his spouse with her parents in the PRC about once monthly by telephone, and financial support provided to them in the amount of \$600.00 every three months. Applicant added he had contact with an aunt and uncle (a retired senior civil engineer who had worked at an electric power plant) residing with his father in the PRC. Applicant described his contact with his father as once per month by telephone, and financial assistance provided in the amount of \$750.00 every three months. Applicant expressed his father's interest in establishing residency in the US, but he reported he was "going slow because most older people have trouble adjusting and return to China." Concerning his mother, Applicant indicated his mother was forced to live and work in a distant factory after the Cultural Revolution as she was suspected of being a spy for Hong Kong. After living in Hong Kong since 1980, she came to the United States when Applicant's brother came to the US to study, which Applicant indicated was in August 1993. Applicant related that his brother moved to Canada in

September 1996, at which time his mother "returned to live with [his] father" in the PRC until May 1997 when she went back to Canada. He indicated on the SF 86 he should have reported her address in Canada rather than the PRC, but he thought his parents should have the same address.

Regarding his personal situation, Applicant told the DSS agent during his January 7, 2000, interview that he had never joined the Communist Party in the PRC and had no relatives or friends affiliated with the party or the military. With regard to his college education in the PRC, Applicant indicated the Chinese government paid his tuition and his father his expenses. Following graduation, he declined a job offered by the Chinese government as he had already been accepted into a master's program at a public university in the United States. Applicant admitted he had possessed a valid PRC passport in the seven years preceding the execution of his SF 86, and attributed his failure to disclose the issuance of that foreign passport to his misunderstanding of the question on the SF 86. Concerning his father's stay in the United States which was on a visa, Applicant indicated only that his father remained with him in the US from about September 1993 to May 1997. Applicant expressed no desire to return to live in the PRC because he liked the US and his spouse and children would not be happy there. Asserting a dislike of the materialism of the people in Taiwan, Applicant stated a belief that Taiwan should be returned to the PRC by negotiation. He claimed loyalty only to the United States and a willingness to bear arms against any adversary, even the PRC. He denied any contact with any official of the PRC government since August 1983, excepting consular officials on renewal of his PRC passport in December 1991 and December 1996.

On January 11, 2000, Applicant was reinterviewed about the omission of his foreign travels from his SF 86 and his parents' situation. Admitting he had failed to disclose on his SF 86 his foreign travel to the PRC in 1994 and his brief trips to Canada, Applicant claimed he thought only US Government sponsored travel need be listed. Regarding his father's stay in the United States, Applicant acknowledged that since he was not yet a permanent resident of the US when his father came over initially, he could only sponsor him for six months with one extension. Aware of his father's illegal stay after the expiration of his visa (which he indicated was in September 1994), Applicant stated, "I made the decision to keep him living with me because his nervous health was so bad I did not want him to be alone in PRC." He claimed his father returned to the PRC in May 1997. Applicant admitted he had been "wrong" when he stated in his prior interview that his mother had lived with his father in the PRC from September 1996 to May 1997. Because she was still married to his father, Applicant expressed his belief it was better to say they lived together. Applicant admitted he had not been completely candid on his initial application for naturalization, as he had reported both parents as living in the PRC at his father's permanent residence, and did not disclose his trips to Canada.

On February 28, 2000, Applicant was interviewed about his possession of a United States passport. Regarding his failure to disclose on his SF 86 that he held that passport, Applicant stated, "my intuition told me that if I stated 'NO' on my security clearance application, it would expedite my security clearance process." Applicant related he had not listed his trips to Canada on a form completed in March 1999 for his United States citizenship as he had been told "short trips to Canada did not apply."<sup>(10)</sup> Asked about his father's stay in the United States, Applicant maintained he was sure that his father stayed with him from "September 1996 to May 1997." Confronted with a discrepancy in the family surname, Applicant explained he had been previously incorrect in his spelling of his father's and brother's last names. Since his name had been improperly translated when he first came to the United States in 1983, Applicant kept the erroneous spelling of his last name. On his applications for naturalization and for security clearance, and in his prior interviews with the DSS, Applicant had indicated his father and brother spelled their last names likewise, as he wanted to be consistent and felt it too difficult to explain the discrepancy in surname.

Following his February 28, 2000 interview, Applicant searched his documents and asked his spouse for assistance in clarifying dates his relatives entered and left the United States. On March 1, 2000, Applicant met with the DSS agent to document corrections to information he had previously provided regarding his parents and sibling. Applicant indicated his father remained in the United States from January 1993 to September 1997 as opposed to May 1997 (admittedly illegally since December 1993). He related his mother entered the United States in February 1993 and stayed with him until August 1993 when she went to live with his brother, who entered the US in August 1992 and left for Canada in August 1995. Applicant added that his mother was in the PRC from June 1996 to ay 1997, and that she then returned to Canada. Applicant expressed a willingness to undergo a polygraph examination to verify his truthfulness.

On March 22, 2000, Applicant was interviewed by the DSS agent about his family background. Having grown up in a

wealthy family by PRC standards, Applicant described the takeover of the family home by revolutionary guards when he was about five years of age and the seizure of their financial assets. While Applicant indicated his mother was accused of being a spy for Hong Kong and beaten, Applicant contradicted his earlier statement of January 7, 2000, and indicated her job transfer was not due to concerns of her being a spy for Hong Kong, but rather driven by economics. Regarding his university education in the PRC, Applicant informed the DSS his tuition had been paid for the PRC government on his agreement to accept the job assigned to him on graduation or repay the entire tuition (about \$20,000.00 US for the four years).<sup>(11)</sup> Applicant added that he did not tell anyone in the PRC government that he had no intention of taking the job offered to him at the PRC construction institute until he was safely in the United States, when he sent his father to inform the university he would not be accepting the position. Applicant expressed his knowledge of the PRC government having a record showing he has this obligation to repay the tuition costs which he has no intent of repaying. Applicant admitted he had not previously informed DSS of the tuition obligation, but denied any intent to conceal the information. Claiming he was now being truthful about his foreign connections, foreign travel, and background, Applicant indicated the majority of the discrepancies in his prior accounts (on his SF 86 and during prior interviews) were caused by poor memory and failure to check records before providing the information. Applicant admitted he knowingly did not disclose on his SF 86 his possession of a United States passport as he thought it would expedite the processing of his security clearance; he knowingly provided false information about his mother's address on his SF 86 and in his application for naturalization, as he thought it would be easier than explaining the story of his parents' separation; and he knowingly adopted an incorrect translation of his last name and listed his male relatives as having that same name so that his background investigation could be completed as quickly as possible.

Applicant traveled to the PRC with his spouse and children for three weeks in the June/July 2001 time frame. He visited his father and in-laws on that trip.

Circa September 2000, Applicant applied for his mother to emigrate to the United States. Her petition was approved on August 6, 2001. Applicant filed an immigrant petition for his father as well, which was received by the INS on October 1, 2001, and approved a few weeks later.<sup>(12)</sup> In February 2002, Applicant's mother took up residence with her spouse in the PRC. Applicant's parents were scheduled for a visa interview to take place in August 2002 at the American Consulate in the PRC. Applicant's mother failed to obtain required documentation from Hong Kong, and their interview was rescheduled for November 2002.

As of November 2002, Applicant's parents were living together on the second story of the father's home in the PRC. Applicant telephones them twice per month. Applicant is personally close to the aunt and uncle who occupy the third story of the home in the PRC.<sup>(13)</sup> The first floor is rented out.<sup>(14)</sup>

Applicant does not have a close personal relationship with his in-laws, who remain resident citizens of the PRC, although Applicant's spouse telephones her parents twice per month and sends them \$600.00 four times per year. Her father, prior to his recent retirement, was an economic and trade lawyer with a law firm in the PRC.<sup>(15)</sup> Her mother is retired from her position as an elementary school teacher in that country.

Sometime prior to August 2002, Applicant's brother acquired Canadian citizenship. Applicant calls his brother once weekly by telephone and visits him once a year.

Hired by his current employer based on his extremely good credentials in computational mechanics, Applicant's work has been outstanding, both technically and in his ability to write proposals. Applicant's employer and its military customer recognize Applicant as an expert in the field of probabilistic mechanics. Applicant's contributions are viewed as critical to the company's research efforts on behalf of the United States military. The firm's vice president has no concerns about Applicant's trustworthiness, integrity or honesty. A contract manager with whom Applicant has worked closely considers Applicant to be of unquestionable character. While this coworker is aware Applicant's father overstayed his visa, Applicant represented the length of illegal stay was only six months.

## POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an

acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

### **Foreign Influence**

E2.A2.1.1. The Concern: A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation or pressure.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A2.1.2.1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

E2.A2.1.3. Conditions that could mitigate security concerns include:

None.

### **Personal Conduct**

E2.A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination

E2.A5.1.2.5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

\* \* \*

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses. Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

### Burden of Proof

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the 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 is nonetheless security worthy. As noted by the United States Supreme Court in *Department of 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." Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. See Enclosure 2 to the Directive, Section E2.2.2.

### 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 E:

Under guideline B, a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he is bound by affection, influence or obligation are not citizens of the United States or may be subject to duress. Whether an applicant's family ties in a foreign country pose a security risk depends on a common sense evaluation of the overall facts and circumstances of those family ties. Applicant's father, an uncle and aunt, and his in-laws are resident citizens of the PRC. As of February 2002, his mother was living in the PRC as well. A naturalized citizen of Hong Kong, it was not established in the record whether the transfer of Hong Kong from British to PRC control affected her citizenship status. Applicant's brother, a resident of Canada since August 1995, recently acquired Canadian citizenship. Applicant is clearly bound by affection and/or obligation to these foreign nationals. Out of concern for his father, Applicant knowingly allowed him to remain with him illegally from December 1993 to September 1997. While his mother primarily spent her time in Canada with Applicant's brother until she joined Applicant's father in the PRC in February 2002, Applicant visited her once a year and called her once weekly when she was in Canada. As of November 2002, Applicant has regular (twice monthly) telephone contact with his parents, and he sends his father financial support in the amount of \$750.00 every three months. Applicant sponsored his brother's studies in the United States, and he continues to call him once weekly in addition to their yearly visits. Although Applicant does not share a close personal bond with his in-laws, he has visited with them on his trips to the PRC and his spouse calls them twice monthly, in addition to sending them about \$600.00 every four months. The extent of Applicant's contacts with his aunt and uncle in the PRC is not clearly evident in the record, although Applicant indicated he was personally close to them. Applicant is aware his uncle retired in 1999 from his position as a civil engineer for a government-owned electric power plant. Disqualifying condition (DC) E2.A2.1.2.1., an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country, applies in evaluating Applicant's security worthiness.



The security concerns engendered by the foreign citizenship and/or residency of close family members may be mitigated where it can be determined that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States (MC E2.A2.1.3.1.). There is no evidence any of Applicant's relatives are agents of a foreign power. However, Applicant has the burden of demonstrating that these foreign nationals are not in a position to be exploited by a foreign power. As articulated by the DOHA Appeal Board in ISCR Case No. 00-0317 decided on March 29, 2002:

Under Guideline B, the presence of family members in a foreign country must be evaluated both in terms of (i) possible vulnerability to coercive pressure or influence being brought to bear on, or through an applicant's family members in a foreign country, and (ii) possible vulnerability to noncoercive means of influence being brought to bear on, or through, an applicant's family members in a foreign country.

The risk of undue influence because of Applicant's relatives residing in the PRC cannot be completely discounted, notwithstanding their status as retirees. Coercive measures were taken in the past against the family by the PRC government because of his paternal grandfather's private ownership of a charcoal factory and his mother's ties to Hong Kong. Not only was the family forced to live within one room, but his mother was suspected of being a spy for Hong Kong and beaten by revolutionary guards. As recently as March 2000, Applicant indicated the PRC government was still controlling the house in which his parents and uncle and aunt presently reside. Whether or not the rent for the first floor of the home is currently being paid to Applicant's father or to the PRC government, I cannot conclude with any reasonable certainty that the foreign authorities are no longer interested in the activities or assets of the family. While Applicant has sponsored the emigration of his parents to the United States, and the initial petitions had been approved, his parents had not yet been interviewed. Compounding the concerns regarding potential foreign influence is Applicant's tuition debt to the PRC government, which he has no intent to repay. Furthermore, Applicant's spouse is close to her parents, so there is also a risk of indirect influence through his spouse. Applicant's father-in-law, prior to his relatively recent retirement, was an economic and trade lawyer, whose practice may well have drawn the attention, if not the direct involvement, of foreign authorities. Adverse findings are returned as to subparagraphs 1.a., 1.b., 1.d., 1.e. and 1.f. of the SOR due to the unacceptable risk to security presented by the PRC citizenship and residency of his parents, aunt and uncle and in-laws, and by his outstanding monetary obligation to the PRC government. Subparagraph 1.c. is found for Applicant, as his brother's present situation is seen as presenting little risk of foreign influence. Now a Canadian citizen, there is no evidence Applicant's brother has ever been improperly approached or had any undue pressure placed on him by Canadian authorities.

Applicant is alleged to have deliberately provided to the Government false or misleading information concerning his possession of US and PRC passports and his foreign travels; his name and the names of other family members; his mother's citizenship and addresses; his father's illegal stay in the United States; and his spouse's relatives in the PRC.

(16) Significant personal conduct concerns (guideline E) concerns are raised where an applicant is not completely candid with the United States Government about information relevant and material to a personnel security or trustworthiness determination, as it could indicate the person may not properly safeguard classified information. After consideration of the numerous discrepancies in the record-some adequately explained by Applicant-Applicant was found to have engaged in intentional misrepresentation or concealment, as follows:

- Applicant falsified his May 21, 1999, SF 86 by denying he had ever held a United States passport, had possessed a foreign passport in the 7 years preceding the date of his SF 86, or had traveled outside of the US in the last 7 years. Applicant had traveled to the PRC on his PRC passport in 1994 and to Canada on an annual basis in 1996, 1997 and 1998. In interviews of January 7, 2000 and January 11, 2000, Applicant falsely claimed to have failed to list on his SF 86 his foreign travel because he misunderstood the question. clearance in May 1999, and during interviews with a DSS special agent on January 7, 2000, and January 11, 2000, that on his arrival in the US he adopted a spelling of his last name which was an improper English translation of his family name, and that he had been known by another name in the PRC. and for his security clearance in May 1999, and during interviews with a DSS special agent on January 7, 2000, and January 11, 2000. and executed his SF 86. He lied in a January 7, 2000, interview and statement when he indicated his mother had lived with his father in the PRC from September 1996 to May 1997, as his father was still with him illegally in the US during that period. when he indicated his father had returned to the PRC in May 1997, as his father did not leave the US

until September 1997. arrested, in that he knew his father was not longer legally in the United States as of December 1993 and permitted his father to continue to reside with him in the US until September 1997.

Under the personal conduct guideline, the falsifications of Applicant's SF 86 and INS documents fall within the ambit of DC E2.A5.1.2.2. (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities). DC E2.A5.1.2.3. (Deliberately providing false or misleading information concerning relevant and material matters to an investigator . . . in connection with a personnel security or trustworthiness determination) must be considered as well. Furthermore, the extent of the misrepresentation presented in this case merits application of DC E2.A5.1.2.5. (A pattern of dishonesty).

As alleged by the Government, Applicant omitted from his SF 86 any reference to his spouse's nickname, as well as the identities of his children and in-laws. Applicant also indicated on his SF 86 that his mother was a citizen of the PRC, when she holds Hong Kong citizenship. However, his failure to disclose his spouse's nickname or to list his children and in-laws on his SF 86 was not knowing and willful. His claim that he was confused about his mother's citizenship is also accepted, given Hong Kong has been transferred to the PRC. Favorable findings are therefore warranted as to subparagraphs 2.c., 2.d., and 2.h. of the SOR.

The intentional misrepresentations reflected in SOR subparagraphs 2.a.(1), 2.b.(1), 2.e.(1), ~~(17)~~ 2.e.(2), 2.e.(6), 2.f.(1), 2.f.(2), 2.g.(1), 2.i.(1), 2.i.(2), 2.i.(4), 2.j.(a) ~~(18)~~ may be mitigated under the Directive where the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness or reliability (E2.A5.1.3.1.); the falsification was isolated, not recent and the individual has subsequently presented correct information voluntarily (E2.A5.1.3.2.); the individual made prompt, good faith efforts to correct the falsification before being confronted with the facts (E2.A5.1.3.3.); or the omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided (E2.A5.1.3.4.). None of the mitigating conditions apply in this case.

Given the number of documents Applicant falsified and the scope of the misrepresentations, his falsifications cannot be considered as isolated. Although Applicant provided significant detail about his foreign relations during his initial interview with a DSS agent on January 7, 2000, he made no effort to explain his last name was spelled incorrectly. Indeed, he identified male family members by that same name even though his father, brother and uncle had not adopted that spelling. It was not until he was confronted by the DSS agent about the discrepancy that he admitted use of an improper translation because his name had been spelled wrong on the documentation filed for his study in the United States.

What is readily apparent is that Applicant placed his personal desire to have his security clearance adjudicated quickly above his obligation to be completely candid with the Government. He elected not to disclose on his SF 86 that he had a United States passport as he thought it would expedite processing of his clearance. He repeatedly misrepresented that his mother was living with his father as he felt it was easier than explaining their separation. Likewise, he adopted a translation of his last name which he knew to be improper so that he would not have to explain his uncle's error.

Applicant's testimony at the hearing did little to bolster his case in reform. While he admitted he had allowed his father to overstay his visa for "selfish and emotional driven decisions" (Transcript p. 71), he claimed he did not equate his conduct as criminal. He had previously admitted he knew his father was in the country illegally between December 1993 and September 1997. When confronted with his failure to be frank about his mother's address, Applicant testified he always used her permanent address in the PRC because he knew she would "definitely every year stay with [his] father at certain times every year" and it was difficult to check her locations. Prior accounts by Applicant mention no such cohabitation. Indeed, Applicant had indicated his mother lived in Hong Kong until 1993 when she came to the United States, and that she had not lived with his father between 1970 and February 2002. Applicant had regular contact with the brother with whom his mother lived, which undermines his assertion that he was unaware at times of where she was. Regarding his tuition obligation, Applicant testified he had never told the DSS agent that he had to repay the PRC for his undergraduate education.

Yet, he signed and swore to the truth of a statement in March 2000 in which he indicated he knew the PRC government had a document somewhere of his agreement to repay the tuition if he did not accept the tendered employment. Regarding his failure to list his trips to Canada on his SF 86 and on his application for naturalization, Applicant claimed he had been told short trips to Canada do not count. Yet, at his hearing, he testified discrepantly, indicating the process at the border (failure of border officials to check passports) had given him the impression travel to Canada was like traveling to another US state.

With respect to the numerous discrepancies in the record, Applicant denies any intent to mislead, citing his misunderstanding of some inquiries, his failure to review his SF 86 carefully, the DSS agent mistaking what he had said. Applicant's portrayal of himself as an individual who innocently did not appreciate the need for accurate reporting cannot be reconciled with his reputation as an expert in the field of computational mechanics. Indeed, the project manager at work testified Applicant is better at proposal writing than many of his colleagues. While Applicant's contributions to the defense effort have been substantial, they are not sufficient to overcome the concerns for his judgment, reliability and trustworthiness engendered by his record of false statements.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

#### **Paragraph 1. Guideline B: AGAINST THE APPLICANT**

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

#### **Paragraph 2. Guideline E: AGAINST THE APPLICANT**

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: For the Applicant

Subparagraph 2.d.: For the Applicant

Subparagraph 2.e.: Against the Applicant

Subparagraph 2.f.: Against the Applicant

Subparagraph 2.g.: Against the Applicant

Subparagraph 2.h.: For the Applicant

Subparagraph 2.i.: Against the Applicant

Subparagraph 2.j.: Against the Applicant

## DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued to Applicant under the name he has used since coming to the United States. This decision is issued under that name as well, acknowledging his surname would be spelled differently if translated from Mandarin Chinese into English. As reflected in exhibit A, on February 24, 1983, Applicant's uncle filed an affidavit of support with the US Immigration and Naturalization Service (INS) for Applicant to study in the US. On the affidavit of support, the uncle listed Applicant's last name as it would appear in English translated from Cantonese Chinese.
2. Applicant has provided conflicting accounts as to the reason for his mother's separation from the family [She was accused of being a spy for Hong Kong. (See Ex. 2); She was told she had to relocate if she wanted to keep her job and the family needed the funds so she made the sacrifice. (See Ex. 6)]. At his hearing, he attributed the discrepancy to his personal interpretation of matters his parents feared to discuss ("I actually interpreted the questions based on my interpretations. This is because, during the cultural revolution, my parents can never talk about the true stories because they're scared it may have some impact from the government." Transcript p. 69). He later indicated on cross examination the government never indicated that his mother was sent to the province because she was suspected of being a spy for Hong Kong, but both of his parents indicated she was forced to relocate for that reason. (Transcript p. 88). The distant relocation and beating of his mother would be consistent with his initial explanation that his mother was accused of being a spy, rather than that she made the ultimate sacrifice to bring in needed funds. Whatever the reason for his mother's separation from the family, Applicant has not adequately explained why he provided disparate accounts in his subject interviews.
3. At his hearing, Applicant not only testified that he had no obligation to the PRC for the tuition costs, but he maintained he did not tell the DSS agent that he owed the PRC for tuition. However, he also testified inconsistently that he gave the agent the impression he had a repayment obligation due to his confusion about J-1 and F-1 visa requirements:

The government paid everything and the government assigned a job after your graduation but, at that time, the government you if you can support yourself, go outside to the United States to study at the United States, so that's the reason why the school actually approved my application and actually issued me the U.S. (sic) passport even when I was a sophomore at the university. They never gave me any troubles at all. Why I gave this impression because I was confused at that time with the J-1 and F-1 requirements. If you are the J-1 which means the government sponsored your school in the United States, you do have obligations to return to China, service for two years, after you study here but for the F-1 you don't have this obligation at all. (Transcript pp. 89-90).

A review of Applicant's PRC passport indicates he was granted an F-1 visa by the United States. Under the F visa program authorizing non-immigrant foreign study in the United States, applicants for visa must prove that sufficient funds will be available to defray all expenses for the first year of study and adequate funds available for each subsequent year. The J nonimmigrant visa is for educational and cultural exchange programs designated by the US Department of State, and participants in the J program must have sufficient funds to cover all expenses, or funds must be provided by the sponsoring organization. *See* [www.travel.state.gov](http://www.travel.state.gov). There is no evidence the PRC government paid for Applicant's graduate studies in the United States, or sponsored his studies. However, the issue is not the funding of his graduate education in the United States, but rather whether he has to repay the PRC for his undergraduate studies in the PRC. It stretches credulity the PRC tuition obligation would be dependent on the nature of a visa issued by a foreign country for subsequent study, especially where the PRC expected him to take up a position as an associate professor at a PRC construction institute following graduation. Applicant testified he did not inform the PRC he had no intent to take the job until he was in the US. Under the United States F visa program, applicants must establish to the satisfaction of a consular officer that they have binding ties

to a residence in a foreign country which they have no intention of abandoning, and that they will depart the US when they have completed their studies. Assuming arguendo the PRC knew of his planned foreign study, the PRC and the US had a reasonable expectation Applicant would return to the PRC after completing his studies in the US. It is difficult to believe his tuition obligation would have been excused since he failed to return to the PRC.

4. The PRC passport bears a handwritten English translation of Applicant's name. It is not clear whether the English translation of his last name is from the correct Mandarin or consistent with the spelling on his affidavit of support filed with the US INS in February 1983 and adopted by Applicant once in the United States.

5. After review of his father's visa documentation, Applicant told the DSS agent in a letter dated February 28, 2000 (provided to the agent during an interview of arch 1, 2000) that his father came to the United States in January 1993. At his hearing, Applicant testified his father came to the United States in March 1993. (Transcript p. 102). However, a review of his father's passport bears stamps from the PRC of January 4, 1993 and September 28, 1997, which corroborates his earlier account of entry into the United States in January 1993.

6. At his hearing, Applicant testified he did not rate his "mistake allowing [his] father's illegal stay as breaking the law at that time." (Transcript p. 114). However, he admitted to a DSS agent on January 11, 2000, that he knew he could only sponsor his father for twelve months. (*See Ex. 3*). Title 8, Section 1324 of the United States Code makes punishable as a crime the encouragement or inducement of an alien to reside in the United States knowing or in reckless disregard of the law that such residence is or will be in violation of the law.

7. A maternal aunt married a paternal uncle. Applicant informed a DSS agent on March 22, 2000, as of 1988 or 1989, Applicant's father was allowed to have the entire second floor of the home while this paternal uncle lived on the third floor, even though the government still controls the house and collects rent from the tenants on the first floor. (*Ex. 6*).

8. Applicant told a coworker he allowed his father to overstay his visa for about six months. (Transcript pp. 43-44).

9. While Applicant now claims that was an illogical excuse (Transcript pp. 94-95), it is easy to see that documentation of foreign trips may well generate further investigation and inquiry to determine the purpose of those travels. Applicant's hearing testimony to the effect that he misunderstood the question to ask whether he had previously owned a US passport is simply not worthy of belief.

10. Applicant did not elaborate as to who told him short trips to Canada did not apply. At his hearing, he testified he did not think trips to Canada applied based on his experience at the border, where he was just asked about his destination and duration of stay. (Transcript pp. 101-02). Discrepant accounts do not satisfy his burden of demonstrating that the omission was unintentional.

11. Applicant denied at the hearing that he had any obligation to repay the tuition. (Transcript pp. 89-91). When confronted with his prior statement wherein he had indicated that the PRC government had a document showing he still owes the obligation, Applicant denied making any such statement. He then indicated that he "maybe misinterpreted the questions."

12. On the notice from the INS approving the petition, Applicant's father's surname is spelled the same as Applicant's, although on the notice of visa interview appointment issued by the American Consulate in the PRC his last name is correct.

13. In March 2000, Applicant told the DSS agent his father inherited the family home. At his hearing, he testified his father and his uncle both have a share.

14. In response to cross examination, Applicant indicated the PRC government rents out the first story of the house, which had recently been returned to his father and uncle. (Transcript p. 92). In response to my questions, Applicant testified the PRC government took the house and rented out all but one room during the Cultural Revolution. He denied the PRC was renting space at present. Rather, the renter was a family his father was not

allowed to evict. (Transcript p. 119). There is no independent evidence of who rents the bottom floor.

15. On January 7, 2000, Applicant informed a DSS agent that his in-laws remained with them in the United States from November 1997 to November 1998. (Ex. 2). During that same interview, he indicated his father-in-law retired from his position with the law firm in the PRC in November 1998. Either his father-in-law did not actively work in the PRC during the year preceding his retirement or the dates are erroneous.

16. Many of the specific allegations in the SOR do not represent separate instances of falsification, but instead contain the admission to the falsification or a recitation of facts which establish the falsification.

17. The Government alleged in subparagraph 2.e.(1) falsification of her address as well as citizenship. As discussed, Applicant was found to have knowingly misrepresented her address.

18. In order to be consistent, this subparagraph should be numbered 2.j.(1).