

DATE: June 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-06458

DECISION OF ADMINISTRATIVE JUDGE

CHARLES ABLARD

APPEARANCES

FOR GOVERNMENT

Nygina Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 33-year-old civilian employee of a government contractor married to a citizen of China (PRC) who is an employee of a state government and is applying for U.S. citizenship. Although his wife has a father and other relatives living in the PRC and they have visited that country once since their marriage, there is no indication that security considerations should preclude the grant of a clearance. Clearance is granted.

STATEMENT OF CASE

On February 7, 2003, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On March 3, 2003, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to another administrative judge who could not hold the hearing and it was re-assigned to me on April 22, 2003. A notice of hearing was issued on April 29, 2003 and a hearing was held on May 14, 2003. The Government introduced six exhibits at the hearing. The Applicant introduced thirteen exhibits. All of the exhibits were admitted into evidence. Three witnesses testified on behalf of the Applicant who also testified. The transcript was received on May 21, 2003.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign influence under Guideline B. Those admissions are incorporated herein as findings of fact.

After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

Applicant is a native-born citizen of the United States working for a government contractor. In 2000 he married his wife who had a daughter from a previous marriage. Both wife and daughter are citizens of the PRC but are applying for U.S. citizenship based on the citizenship of Applicant. They now have green cards. Applicant's step-daughter is eleven years old and is fully integrated into U.S. society.

Applicant's wife left the PRC in 1996 with enough funds for airfare and one semester of college. She left the PRC hoping to find a better life in the U.S. Her mother and father had been forcibly separated by the government prior to the cultural revolution because her mother's family were wealthy property owners. She was raised by her grandmother. Her father, step-mother, and grandmother remain in the PRC. Her father is a retired electrical engineer. Her natural mother emigrated to the U.S. many years ago and she contacted her when she arrived in the U.S. She does not see her mother now as she discovered that they share no common interests.

When Applicant's wife arrived in the U.S. she received student aid from her university and some financial assistance from her half sister, a U.S. citizen who works for a major U.S. defense

electronics contractor. She later worked for a federal agency to support herself and her daughter. Her college degree is in environmental engineering and she now works in that field for a state government environmental agency.

Applicant and his wife visited the PRC in 2002 for a two week vacation and stayed with her family while there. He advised the security office in his company of the proposed trip and they raised no objection. The father and step-mother of Applicant's wife have visited the United States twice since 1996. None of the family in the PRC have connections with the government and have no interest in the work of Applicant

Applicant is regarded as trustworthy and a person of good character by the two witnesses who testified on his behalf. He has been recommended for promotion by his company supervisors.

Applicant's wife has no loyalty to the PRC and remains angry that the government of the PRC separated her family for political reasons. She and Applicant have invested in their home and are fully committed to building a life in the United States for themselves and their daughter.

POLICIES

[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of

denials." *Egan*, 484 U.S. at 531. *See* Executive Order No.12968 § 3.1(b)

The applicable Guidelines cited in the SOR concern the following Disqualifying Conditions (DC): Foreign Influence-Guideline B

A security risk may exist when an individual's immediate family, including co-habitants, 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.

Conditions that could raise a security concern and may be disqualifying include:

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

Conditions that could mitigate security concerns (MC) include:

1. a determination that the immediate family members in question would not constitute an unacceptable security risk
3. contacts with foreign citizens are casual and infrequent
4. the individual has promptly reported to proper authorities all contacts from a foreign country

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

The foreign influence alleged as a Disqualifying Condition (DC) under Guideline B is based on the citizenship of Applicant's wife and step-daughter and the fact that her family lives in the PRC. (E2.A2.1.2.1) Applicant's wife has limited contacts of approximately once a month with her family. This is no more than one might expect from a daughter living across a continent and an ocean from her father and step-mother. The Applicant has only limited contacts with his wife's family. They have visited the family in the PRC once since their marriage.

Since the family in the PRC has no governmental or intelligence connections which might lead to pressure on Applicant there is no indication that they provide the basis for a denial of clearance for Applicant. They have no interest in his work and there is no indication that they have the background that would permit them to understand his work if they did have such an interest.

Both Applicant and his wife demonstrate a strong loyalty to the United States. His wife still shows a strong antipathy to the government of the PRC based on what she views as the property and family loss they suffered at the hands of that government in the 1960's.

Applicant's trip to the PRC to visit his wife's family was reported as required to his security officer in compliance with security rules.

Mitigating Conditions (MC) 1 applies in that immediate family members, his wife and step-daughter, are not agents of a foreign power or in a position to be exploited by a foreign power and thus do not constitute an unacceptable security risk.(E2.A2.1.3.1.) As to Applicant's contacts with his wife's family, (MC) 3 applies in that contact with these foreign citizens is casual and infrequent (E2.A2.1.3.3.) As to the Applicant's travel to the PRC, (MC) 4 is applicable in that Applicant promptly reported all contacts and travel to proper authorities. (E2.A2.1.3.4.)

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

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

Subparagraph 1.e.: For Applicant

DECISION

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

Charles D. Ablard

Administrative Judge