

DATE: May 28, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 01-13758

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esquire, Department Counsel

**FOR APPLICANT**

Terence S. Ziegler, Esquire

**SYNOPSIS**

This 45-year-old engineer was born in China, but came to the US in 1985. She lost her Chinese citizenship when she became a naturalized American in 2000. She has surrendered her Chinese passport and considers herself to be an American only. There is minimal risk that her relatives in China would ask her to act against US interests and even less that she would agree to so do. Clearance is granted,

**STATEMENT OF THE CASE**

On February 4, 2002, 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 (as amended), issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On February 27, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The case was assigned to me on April 4, 2002. A Notice of Hearing was issued on April 9, 2002, and the hearing was conducted on April 26, 2002. At the hearing, Department Counsel offered one exhibit (Applicant's security clearance application), which was marked as Government Exhibit (GX) 1. Applicant testified on her own behalf, called five other witnesses, and offered five exhibits, which were marked for identification as Applicant's Exhibits (AX) A - E. Without objection, all of the exhibits from both parties were admitted into evidence as marked, and added to the case file. The Transcript (Tr) was received at DOHA on May 6, 2002.

**FINDINGS OF FACT**

Applicant is a 45-year-old "Senior System Engineer" for a company doing business under contract with DoD. Her

company is seeking a Secret security clearance for Applicant in connection with her employment.

Based on the contents of the case file, including Applicant's testimony and all exhibits, I make the following findings of facts as to the current status of each SOR allegation.

#### GUIDELINE C (Foreign Preference)

1.a. - As of the date of issuance of the SOR, Applicant did possess a passport from the People's Republic of China (PRC) (AX A). She renewed the PRC passport in 1999, because she was not sure when she would receive her US citizenship. She became a naturalized American in March 2000. On April 7, 2002, Applicant surrendered the PRC passport by mailing it, with a letter of explanation, to the nearest PRC Consulate General in the US (AX C). The passport was returned to Applicant by the Consulate, bearing a "Cancelled" stamp and with an upper corner of the cover and several pages clipped off to show invalidation (AX B and Tr at 81 - 83).

Although the SOR does not allege that Applicant, a naturalized US citizen since March 2000, exercised dual citizenship with the PRC, a fuller understanding of Applicant's status as demonstrated by the record is helpful in understanding Applicant's position. Applicant came to the US in 1985 to work on her Ph.D., which she obtained in 1991. She came to her present home area to do postdoctoral work, which included working on a US Navy project (Tr at 71). From 1994 to 1997, she taught mathematics at a local university. She has published a number of professional/academic papers, on her own and with a coauthor (Tr at 73).

Applicant has not considered herself to be a citizen of the PRC since becoming an American in March 2000 (AX C and Tr at 76, 78, 79). PRC law states that any PRC citizen who becomes a citizen of a foreign country automatically loses PRC citizenship and can no longer apply for a PRC passport (AX D and Tr at 76). In other words, Applicant has never been a dual citizen of the US and PRC, either legally or in her own mind. Her feelings about the US, the "freedom[s]" she enjoys here, and the way citizens are treated, have made a great impression on her, to the degree that she "love[s] this country" and "wants to become part of it" (Tr at 75, 76).

#### Guideline B (Foreign Influence)

2.a. - As of the issuance of the SOR on February 4, 2002, it was correct that Applicant's mother, brothers and sister were citizens of the PRC and resided in that country. However, Applicant's mother died on February 8, 2002 (Response to SOR and AX E). Her father passed away in 1996 (Tr at 67). The SOR remains accurate as to her siblings.

She has five brothers and one sister. None of them has any contact with the PRC government, Army, or police organizations (Tr at 91 - 95). None of them has ever asked her to do anything that might be averse to US interests. If any of them ever did, she would "immediately" report the contact to US authorities (Tr at 96). Based on the totality of the record, I find that Applicant can be relied upon not to respond favorably to any such requests but to report the request to the proper US authorities.

Applicant's five witnesses have known her for many years on both a personal and professional/academic basis and have nothing but the highest of praise for her integrity, trustworthiness, loyalty, morality, and honesty (Tr at 25 - 64). All of the witnesses are fellow employees of the company seeking a clearance for Appellant. One of them is a naturalized American, who also was born in the PRC, and has received an interim clearance from DoD. The other have received either interim or full clearances (*Id.*)

### POLICIES

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

#### GUIDELINE C (Foreign Preference)

*The Concern:* When an individual acts in such a way as to indicate a preference for a foreign country over the United states, then he or she may be prone to provide information or make decisions that are harmful to the interests of the

United States.

Conditions that could raise security concerns and may be disqualifying include:

None that are applicable under the facts of this case.

#### GUIDELINE B (Foreign Influence)

*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: (1) not citizens of the United States or (2) 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 vulnerable to coercion, exploitation, or pressure.

Condition that could raise security concerns and may be disqualifying includes:

1. An immediate family member, or a person to whom the Applicant has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Condition that could mitigate security concerns includes:

1. A determination that the immediate family member(s), cohabitant(s), or associate(s) 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;

I have evaluated the totality of the evidence under both the specific additional guidance found in Enclosure 3 to the Directive and the general guidelines under Section E2.2.1. of Enclosure 2 to the Directive.

### CONCLUSIONS

#### Paragraph 1 - Guideline C (Foreign Preference)

1.a. - At the time the SOR was issued on December 2001, Applicant was not a dual citizen of the PRC by virtue of her birth in that country and of the United States by naturalization. By law, and in her own mind, she had lost her PRC citizenship when she became a US citizen, under both American and Chinese law (Tr at 13, 16, 17). The surrender of Applicant's PRC passport is documented (AX A, B, and C).

Applicant's renewal of her PRC passport in October 1999 does not raise any preference issues since she was not yet a US citizen, and needed the PRC passport in order to do any international travel. She has maintained contact with her family in the PRC primarily by telephone and has been in the PRC "only four times" since becoming a US resident some 17 years ago. She expects to have even less contact with family members now that both of her parents are deceased. (Response to the SOR). For all of the above reasons, the evidence does not support the current validity of SOR allegation 1.a.

#### Foreign Influence

The presence of family members in a foreign country is always of concern. Under DOHA precedent, it is an applicant's burden to show that family members in a foreign country are not likely to place pressure on the applicant to the extent she/he is forced to choose between loyalty to the individual(s) and the United States. As in the present case, the fact that the family members have never sought to use their relationship with Applicant to do something improper is a positive factor, although certainly not dispositive. It is a factor to be considered along with all the other evidence of record.

The issue that is generally most important is the risk that an applicant might submit to any such pressure and act against the security interests of the United States. In the present case, I conclude there is no evidence suggesting that Applicant would submit to any such pressure. A major positive factor is Applicant's long history of accomplishment and

contribution to our country since coming here in 1985. Her story demonstrates that she has taken full advantage of advantage of what America has to offer.

Applicant has never acted in any way as to suggest she could be influenced to act in favor of the PRC over the United States. The depth of her emotional, family, economic, and other ties to this country have been developed over a period of many years of hard work and dedication to this nation's interests. She considers herself to be an American (Response to the SOR).

The lack of any demonstrated foreign preference makes it even less likely that Applicant would respond favorably to undue or improper pressure or persuasion. The totality of the record establishes Applicant's strong ties to the United States, and her strong character and integrity. I conclude she understands her obligations to this country and is unlikely to respond favorably to any attempt to subvert those obligations.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security." Overall, I conclude that no such doubt exists in the present case. Applicant has demonstrated she possesses the requisite judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

#### FORMAL FINDINGS

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

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the 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.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**