

DATE: November 5, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-26666

## **DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

A native of the People's Republic of China (PRC), Applicant came to the United States (U.S.) in August 1988 to pursue graduate study and make a better life for himself. Applicant and his spouse, also a PRC native, have become U.S. naturalized citizens and are productively employed in the U.S. Foreign influence concerns presented by the PRC citizenship and/or residency of Applicant's mother, siblings, and in-laws are mitigated. These relatives are neither agents of a foreign power nor in a position where they are likely to be exploited by a foreign power. Clearance is granted.

### **STATEMENT OF THE CASE**

On March 7, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant. The SOR 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. [\(1\)](#) 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) concerns.

On March 24, 2003, Applicant executed an Answer to the SOR and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on ay 13, 2003, and a hearing was scheduled for June 12, 2003. At the hearing held as scheduled, two Government exhibits and eight Applicant exhibits were admitted and testimony was taken from Applicant and his spouse, as reflected in a transcript received July 9, 2003. At the Government's request, administrative notice was taken of Section 3of the Operations Security Intelligence Threat Handbook.

### **FINDINGS OF FACT**

The SOR alleges foreign influence concerns because of the PRC citizenship and residency of close family members (mother, sister, brother, father-in-law, mother-in-law), and the in-laws' temporary cohabitation with Applicant and his spouse in the U.S. for more than one year from November 2001. In his Answer, Applicant admitted his mother, siblings

and in-laws are PRC citizens, but indicated only his blood relations reside in the PRC, as his in-laws have been living with him in the U.S. since late October 2001, and are permanent residents of the U.S. After a thorough review and consideration of the evidence of record, I make the following findings of fact:

Applicant is a 39-year-old senior electrical engineer employed by a defense contractor since June 1997. He seeks a security clearance for his duties, which for the last three years have been in the area of developing signal processing software on a major radar development program.

Applicant is the youngest of three children born to local peasant farmers in a small village in the PRC. Unlike his brother, educated to the eighth grade, and his sister who has little or no formal schooling,<sup>(2)</sup> Applicant aspired to a university education. He left home at age 12 against the wishes of his mother to attend an academic high school.

After Applicant earned his bachelor's degree from a university in the PRC in 1984, he took a position as a teaching assistant at a research institute for railway sciences. While Applicant was teaching at the institute, he met his future spouse, a native of another region in the PRC who was a first year graduate student there. His spouse had left her home at age 16 to pursue university studies. With the knowledge of his fiancée but not his parents, Applicant applied for graduate studies abroad in the U.S. and Canada. Applicant accepted a graduate scholarship from a university in the U.S., and then informed his parents of his plans. In August 1988, Applicant traveled to the U.S. on a passport issued to him by the PRC in May 1988. His transportation was paid for with monies borrowed by his father from friends and relatives.

On completion of his first year of graduate study in the U.S., Applicant and his spouse were married in the PRC in May 1989. Applicant returned to the U.S. after one month in the PRC, leaving his spouse behind. In 1990, she was admitted to the U.S. as a lawful permanent resident.

Applicant continued to pursue his graduate studies while working as a teaching assistant in the university's department of mathematics from August 1988 to December 1995 and as a research assistant in the department of computer science from January 1996 to May 1997. With finances tight, Applicant still managed to send his mother in the PRC \$300 to \$400 annually to assist with her living expenses. Applicant's father died in 1996.

Within a month of being awarded his master of science degree in computer science, Applicant began working as a senior software engineer for his current employer in June 1997. He continued to pursue graduate studies in mathematics while employed full-time, and he earned his doctorate in December 1999.

From May 1998 to May 1999, Applicant's mother-in-law and father-in-law resided with Applicant and his spouse in the U.S. In February 1999, Applicant visited his mother in the PRC, staying with her for about two weeks. His spouse did not accompany him, as her parents were still in the U.S. Applicant traveled on his PRC passport.

In December 1999, Applicant became a U.S. naturalized citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the U.S. if required. By acquiring his U.S. citizenship, he lost his PRC citizenship.

With his signal processing project to become classified on its system integration, Applicant executed a security clearance application (SF 86) at the request of his defense contractor employer on May 17, 2000. Applicant disclosed his spouse's status as a PRC citizen and resident alien of the U.S., and the PRC citizenship and residency of his mother. Applicant also reported he had possessed a PRC passport until he acquired U.S. citizenship. In August 2000, Applicant's spouse became a U.S. naturalized citizen.

In conjunction with a planned trip to the PRC to visit his mother and his spouse's parents, Applicant applied for, and was issued, a U.S. passport in Fall 2000 that he then used to travel to the PRC in January 2001. He and his spouse vacationed in the PRC for one month.

In late October 2001, Applicant's in-laws came to the U.S. in anticipation of the birth of Applicant and his spouse's first child. Applicant's father-in-law had already retired from his position as a member of the technical staff of a television station in the PRC; his mother-in-law had been a public school teacher. Applicant's in-laws elected to stay with their daughter after the birth in November 2001 to assist with the care of their new granddaughter. In July 2002, Applicant's

in-laws became lawful permanent residents of the U.S.

On November 20, 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS) about his foreign connections. Applicant related his mother, sister and brother were resident citizens of the PRC and described contact with his mother approximately twice monthly and with his siblings less frequently, "perhaps three or four times yearly." He indicated he had no contact with extended family members in the PRC (uncle, aunts, cousins) apart from casual contact when he visited his mother in the PRC. Applicant volunteered that his in-laws had been residing with him and his spouse in the U.S. since late October 2001 to help with his daughter, but they planned to return to the PRC in approximately six months. Claiming allegiance only to the U.S., Applicant maintained he would immediately report to the appropriate U.S. authority any attempts of undue foreign influence because of his foreign travel or foreign connections.

As of June 2003, Applicant's mother-in-law and father-in-law were still residing with Applicant and his spouse in the U.S. With his in-laws caring for his daughter while he and his spouse work (his spouse for an investment banking firm), Applicant has no problem with them remaining in his home. Neither Applicant nor his spouse are certain of her parents' future plans. Applicant's in-laws own a home in the PRC which is likely to pass to their son on their deaths.

Applicant telephones his seventy-year-old mother twice a month. A peasant worker in the fields when younger, she can neither read nor write and receives no pension from the PRC government. Financially better able to provide for his mother than when he was a graduate student, Applicant sends her \$500 twice per year to help her with living expenses.

Applicant's brother is a boiler worker in the PRC. Married to a textile worker, Applicant's brother and his family live in the same house as Applicant's mother. Applicant speaks with his brother about three or four times a year, usually in conjunction with calls made to their mother. Applicant's sister, who is illiterate, is married to a farmer. She resides with her family in a different village from her mother and brother. Applicant's contact with his sister is limited to telephone conversations with her if she happens to be at their mother's home when he calls. Applicant does not provide any financial support to his siblings.

Applicant's spouse has a brother who works at a television station in the PRC. He is married and has a three-year-old daughter. Contact with her brother is primarily maintained by her parents, who call their son about once or twice a month. Applicant's spouse speaks with her brother occasionally when her parents call him.

Applicant and his spouse's financial assets are all in the U.S. Neither Applicant nor her spouse are involved in any Chinese cultural or community organizations in the U.S., although Applicant's spouse belongs to an Asian networking group at work.

Applicant feels indebted to the U.S. and especially to the university in the U.S. which gave him his graduate scholarship. He considers it his obligation to contribute to the safety and security of the U.S. through his defense-related work, and his work performance reflects this dedication. Considered by his coworkers to be a significant technical asset, Applicant has proven to be a conscientious, hardworking, effective software developer of good character. He has exhibited professionalism and a calm demeanor under pressure as well as a willingness to learn from others.

## **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, this Administrative Judge finds 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.A2.1.2.2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;

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

E2.A2.1.3.1. A determination 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.

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent

Under 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 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 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. Applicant's spouse became a U.S. citizen in August 2000, but his mother, siblings and in-laws remain citizens of the PRC, although his in-laws are lawful permanent residents of the U.S. Applicant has feelings of affection and obligation for his elderly mother, who lives in a small village in the Chinese countryside. He calls her twice per month to see how she is faring and he has provided her financial support since he came to the U.S. as a graduate student in 1988, in the amount of \$1,000 a year since June 1997. Disqualifying condition 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, must be considered in evaluating Applicant's security suitability. Moreover, Applicant's in-laws have resided with him in the U.S. since late October 2001. They remain within reach of PRC authorities by virtue of their foreign citizenship, notwithstanding their permanent residency status in the U.S. E2.A2.1.2.2., sharing living quarters with a person if the potential for adverse foreign influence or duress exists, also applies.

Foreign influence concerns raised by the foreign citizenship and/or foreign residency of close family members may be mitigated where it can be determined that the relatives 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 (*see* E2.A2.1.3.1.). Applicant's relations have never been agents of a foreign power. Applicant's mother, who can neither read nor write, worked in the fields when she was younger. His brother is a boiler maker with the equivalent of eighth grade schooling who is married to a worker in a textile factory. Applicant's sister works part-time in the fields, although she stays at home primarily and cares for her children. Applicant's father-in-law was a technician for a television station and his mother-in-law was a public school teacher in the PRC before they retired. Although both worked for state-run entities, there is no indication either of his in-laws ever held a position of influence or authority in the PRC government, military, or intelligence services.

Immediate family members must also not be in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the family member(s) and the U.S. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non coercive means of influence being brought to bear on, or through, the foreign relations and associates. The likelihood of pressure or coercion being placed on the foreign relatives depends, in large part, on the nature of the country involved (whether it respects democratic principles and human rights, has friendly relations with the US, etc.). The PRC has significant intelligence collection capability of which the U.S. is a primary target.<sup>(3)</sup> While the PRC has been extremely aggressive in using human intelligence in the U.S., even tasking some of its students studying in the U.S. with obtaining information about high and mid-level technologies not available for export to the PRC, the PRC continues to have a poor human rights record.<sup>(4)</sup> Attempts by the PRC to pressure its citizens remain a real possibility, but the risk of undue foreign influence is minimal in Applicant's case. His blood relatives in the PRC are not engaged in occupational or social endeavors likely to call attention to their activities. Applicant's elderly mother does not even receive a pension from the PRC. Although Applicant's in-laws own a home in the PRC, they appear content to remain in the U.S.

There are no allegations of foreign preference, but Applicant's respective ties and attitudes toward the U.S. are relevant in assessing whether he is in a position where he could be forced to choose between his close family members and his obligations to the United States. As a child Applicant resolved to make a better life for himself than that enjoyed by his parents who worked the fields in the Chinese countryside. He left his home at age 12 to attend an academic high school. After earning his bachelor's degree in the PRC, he looked to the West for his future. He applied to institutions in the U.S. and Canada for graduate study, knowing as he did so that he would be leaving behind his fiancée in the PRC, at least temporarily. Grateful for an academic scholarship from a university in the U.S., Applicant took full advantage of the opportunity to realize "an American dream" (Transcript p.105). He applied himself to his studies and graduate

teaching positions, and was awarded two Master's degrees in 1997. He then elected to pursue his career in the U.S., and commenced employment for a defense contractor, where he could "pay back" the U.S. by working hard to enhance the security of this country. In acquiring his U.S. citizenship, Applicant demonstrated a clear preference for the U.S.

Notwithstanding his affection for his mother, she has little personal influence on his decisions, and he is not especially close to his siblings, with whom he has little in common. Those closest to him (spouse and young daughter) are resident citizens of the U.S., and Applicant is not likely to jeopardize their security by succumbing to any foreign pressure. While any connections with the PRC must be given especially close scrutiny, I am persuaded Applicant can be counted on to report to U.S. authorities any improper contacts, requests, or threats. Those who have had the opportunity to observe and assess Applicant on the job attest to his good character and ethics. Favorable findings are warranted as to subparagraphs 1.a., 1.b., 1.c., and 1.d. of the SOR.

### **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: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: 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.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under 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).
2. Applicant's sister cannot read or write.
3. *See* Operations Security Intelligence Threat Handbook, Section 3.
4. *See* the U.S. State Department's Country Reports on Human Rights Practices-2002 pertaining to China (PRC) including Tibet, Hong Kong, and Macau, released March 31, 2003, by the Bureau of Democracy, Human Rights, and Labor.