

DATE: June 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-01443

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esquire, Department Counsel

Peregrine Russell-Hunter, Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 53-year-old naturalized U.S. citizen who was born in mainland China, has lived here since 1990. His elderly, retired parents still live in China, his children are naturalized U.S. citizens, and his son-in-law is a permanent resident alien. Applicant's wife has been unable to pass the language requirement for naturalization, but will remain in the U.S. as a permanent resident alien. Applicant's foreign contacts are casual and infrequent, and not in a position to be coerced or pressured by the Chinese government. Applicant has mitigated the security concerns under Guideline B (Foreign Influence). Clearance is granted.

STATEMENT OF THE CASE

On January 2, 2003, the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline B (Foreign Influence). The SOR further informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. ⁽¹⁾

On January 17, 2003, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on February 28, 2003. On March 11, 2003, DOHA issued a Notice of Hearing setting this case to be heard on April 1, 2003. All parties appeared as scheduled and the Government presented five exhibits (GE 1 through 5), of which GE 1 and GE 2 were admitted as evidence without objection. I granted Department Counsel's request that I take administrative notice of the information contained in GE 3 through GE 5, for identification only. ⁽²⁾ Applicant presented one exhibit (AE A), which was admitted without objection. Applicant also testified in his own behalf and presented three other witnesses. DOHA received the transcript (Tr) on April 16, 2003.

PROCEDURAL MATTERS

Applicant submitted four documents with his Answer, which would normally be submitted as exhibits in his case-in-chief subject to objection or

comment by Department Counsel. Rather than sever the documents and ask Applicant to re-submit them, I determined that Department Counsel had no objection to my considering the documents as evidence. Therefore, I have considered the documents attached to the Answer as AE B, C, D, and E. [\(3\)](#)

FINDINGS OF FACT

Applicant admitted with explanation the allegations in SOR subparagraphs 1.a and 1.b, however, he denies the allegations in subparagraphs 1.c and 1.d. Additionally, after a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant was born in mainland China in 1947 in Chengdu province, which is about 1,300 miles southwest of Beijing. [\(4\)](#) At age 18, he left home to study at a university in Beijing. Between 1965 and 1990, when he moved to the United States, he visited his parents six times. His parents, now in their 80's, are a retired college professor and accountant, living on pensions in Chengdu. Applicant sends them between \$500.00 and \$1,000.00 each year to supplement their retirement income. Applicant's wife of nearly 30 years was also born in mainland China. The couple has two grown children, both born in China. [\(5\)](#)

Applicant expertise is computer science, which he studied and has taught at Chinese and American universities. In 1984, Applicant came to a U.S. university as a visiting scholar in the field of computer science for two years. During that time, he also worked at a start-up information technology firm, and spent time at another university before returning to China in 1986. While in the U.S., he worked with and became friends with other Chinese citizens who were here for the same reasons. They returned to China in 1986, and Applicant still has casual contact with two or three of them once or twice yearly by e-mail. [\(6\)](#)

Applicant returned to China in 1986, but knew then he wanted his family to live in the United States. He came to the U.S. alone in 1990 to find work. His wife and daughter followed in 1992, and his son arrived in 1993. All four became permanent resident aliens as soon as possible, and, except for Applicant's wife, all are now naturalized U.S. citizens (Applicant became a citizen in August 1999). Applicant's wife has been unable to pass the language requirement, but continues to take English language classes and will try again to pass the test. Alternatively, she intends to remain here with her family as a permanent resident alien because her family is here, and she would not receive the various retirement benefits she and Applicant have accrued since moving to the U.S. [\(7\)](#)

Applicant has returned to China four times since 1990. In 1997, he and his wife visited her sister who was gravely ill. His sister-in-law eventually died the next year. In 1999, Applicant's parents and his wife's parents decided to visit the U.S. as a way of getting over the loss of Applicant's sister-in-law. Because of their advanced age, Applicant traveled to China to escort them to the U.S. where they visited for six months. Applicant returned to China in July 2000 for three weeks to see his parents after his father suffered a cerebral hemorrhage. After he was hired by his current employer in February 2001, Applicant made an additional trip to China, again to visit his parents. [\(8\)](#)

Since arriving in the United States in 1990, Applicant has worked as a software engineer for several different private companies. Only his current employer is associated with DoD and may require Applicant to report overseas travel. His employer is aware that he traveled to China in 2002, and he has used his U.S. passport only for all of his travel since naturalization. A previously held Chinese passport expired in December 1999, four months after he was naturalized. [\(9\)](#)

Applicant's son-in-law is a Chinese citizen, but is also permanent resident alien as of April 2002 (he applied for this status in April 2001). He came to the U.S. on a student visa in 1995 and

graduated from a major U.S. university in 1999. He was previously married from 1995 to 1997. Since marrying Applicant's daughter, he has continued to live and work in the United States, and the couple has a child, born in the United States in 2001. He has returned to China only once, and his parents visited in 2001 to see their new grandchild. He has irregular contact with his parents and little or no contact with his siblings. None of his family is employed by or has any association with the Chinese government. He intends to apply for citizenship when he is eligible in 2005. [\(10\)](#)

Applicant's employer is very happy with his work and regards Applicant as a reliable and trustworthy person. [\(11\)](#) I found Applicant and his witnesses sincere and earnest in their testimony.

POLICIES

The Directive sets forth adjudicative guidelines [\(12\)](#) to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant.

However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, specifically, that Applicant has close ties of affection who are foreign citizens, I conclude the relevant adjudicative guideline to be applied here is Guideline B (Foreign Influence).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹³⁾ for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽¹⁴⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽¹⁵⁾

CONCLUSIONS

Guideline B (Foreign Influence). 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.⁽¹⁶⁾

The Government has established its case under Guideline B by showing that Applicant has close ties of affection who are foreign citizens and/or living in a foreign country. As alleged in SOR subparagraphs 1.a, 1.b and 1.c, Applicant's parents, wife, and son-in-law are Chinese citizens. His parents still live in China, but his wife and son-in-law live with or near Applicant in the U.S. The allegations in subparagraphs 1.c and 1.d that Applicant's children are Chinese citizens may have been true based on the background investigation. However, both have since been naturalized as U.S. citizens. Both persons took the Oath of Allegiance renouncing their foreign citizenship and there is no information available to show they done anything since naturalization to maintain or regain any rights or privileges available as Chinese citizens. I must conclude, therefore, that they, like their father, are no longer Chinese citizens. On these facts, Guideline B Disqualifying Condition (DC) 1⁽¹⁷⁾

applies.

Any analysis under Guideline B must consider the nature and circumstances of the country involved. China, an authoritarian Communist regime, has an abysmal record of human rights abuses of its citizenry. Further, China is considered one of the more active countries when it comes to espionage activities in the United States. However, China has also been trying to transform its economy to more of a free enterprise system. A key to this effort has been to gain entry to global markets (particularly the U.S.) in exchange for increased cooperation with the west and reforms in its internal affairs. Nonetheless, China's internal practices as well as its interests as an emerging superpower are often at odds with the United States' national interests. Therefore, any contacts in China by persons with access to classified information warrant more scrutiny than contacts with countries whose interests and forms of government are more closely aligned with ours.

The dispositive issue is whether, in light of the foregoing, Applicant's parents, wife or son-in-law are vulnerable to coercion by the Chinese government for purposes of compromising U.S. national interests through the Applicant. While the possibility of coercion must be acknowledged solely because his parents live in China and he has other foreign ties of affection, the likelihood of this happening appears to be so remote that it does not pose an unacceptable risk in the context of determining Applicant's suitability for a clearance. They are elderly pensioners, one of whom has health problems. They retired from non-governmental positions and continue to live in a province far-removed from the central government in Beijing.

Applicant's son-in-law, while still a Chinese citizen, has lived in the United States for seven-and-a-half years. He now has permanent resident alien status after having lived here as a student, and has established significant U.S. ties through his marriage, the birth of a U.S.-born child, completion of his education at a U.S. college and an apparently successful

career as a software engineer. He has little contact with his family overseas and has seen them twice since 1995. Applicant's wife would be a U.S. citizen now were it not for her difficulty learning English. Her contacts with her parents are limited and she has been back to China once since 1990, when she visited her ailing sister in 1997. Applicant's children are U.S. citizens and have little or no contact with their parents' relatives or, in the case of Applicant's daughter, their in-laws in China. None of Applicant's relatives is or ever has been associated with the Chinese government, and they have not been contacted by anyone purporting to represent the Chinese government or trying to obtain information about Applicant's work. Applicant's wife is a housewife with permanent resident alien status and no desire to return to China. She has infrequent contact with her parents and other relatives in China, and is still trying to pass the language requirement so she can become a U.S. citizen. Her parents are also elderly and retired from non-governmental careers. Guideline B DC 1 ⁽¹⁸⁾ and DC 3 ⁽¹⁹⁾ apply.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. Despite concerns the nature and practices of the Chinese government, I am convinced that Applicant's foreign connections do not pose a security risk. I conclude Guideline B for the Applicant.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Foreign Influence (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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Tr., p. 25 - 28.
3. Tr., p. 11 - 15.
4. GE 4.
5. GE 1; Tr., p. 74 - 75, 78.
6. Tr., p. 86 - 94.
7. Answer; AE C and AE E; Tr., p. 57 - 58, 69, 100.
8. GE 1; Tr., p. 76 - 77.

9. GE 1; Tr., p. 32 - 35.

10. Tr., p. 39 - 51.

11. AE A.

12. Directive, Enclosure 2.

13. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).

14. *See Egan*, 484 U.S. at 528, 531.

15. *See Egan*; Directive E2.2.2.

16. Directive, E2.A2.1.1.

17. 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;

18. 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;

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