

DATE: May 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-02499

DECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Jonathan Beyer, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's possession of a foreign passport after he became a US citizen is mitigated by his timely action in returning the passport to the issuing government, and in renouncing any potential claim of dual citizenship. Applicant's family relations in his country of birth are not cause for a security concern, due to Applicant's evidence of strong ties with the United States. Clearance is granted.

STATEMENT OF THE CASE

On October 9, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR details 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. It recommended referral to an Administrative Judge to determine whether a clearance should be granted or denied.

The Applicant responded to the SOR in a written answer dated October 18, 2002, in which he requested a hearing. The case was assigned to me on November 27, 2002. On December 4, 2002, a Notice of Hearing was issued scheduling the hearing on January 10, 2003. At the hearing the Government submitted seven documentary exhibits. Applicant testified, and he submitted five documentary exhibits. The transcript was received by DOHA on January 17, 2003.

FINDINGS OF FACT

Paragraph 1 (Guideline C - Foreign Preference.). The Applicant is 45 years old, and he and his wife (now separated) were born in the People's Republic of China (PRC). Applicant's wife came to the United States in 1986 to study, and Applicant followed her in 1987. Applicant earned a master's degree from an American university in 1991, and he became a naturalized US citizen in 2000. Applicant has two children, both born in the US, and he is employed by a defense contractor as a software engineer. At the hearing, Applicant testified in his own behalf, and his testimony was

credible and worthy of belief.

Prior to becoming a naturalized US citizen in September 2000, Applicant held a passport issued by the PRC. He retained the PRC passport while he was a green card holder in America, but he had no occasion to use it because he did not travel overseas prior to becoming a US citizen. Applicant testified "[A]fter I become a US citizen, I put that passport away, never use it, never touch it." (Tr. 19.) When Applicant became a US citizen, he applied for and received a US passport, and he used this passport to travel to China in December 2000. It was his only return visit to China since arriving in this country. (Attachment to Applicant's answer to SOR.)

Upon receiving the Government's SOR dated October 9, 2002, Applicant was put on notice that his possession of a Chinese passport was in conflict with his loyalty to the United States. On October 17, 2002, Applicant mailed his passport to the PRC embassy in Washington DC, accompanied by a letter stating "Because I have been a US citizen from 2000, I surrender my Chinese passport to your office." (App. Ex. A.) Applicant also sent the letter by FAX, but the PRC embassy did not reply to either communication. (Tr. 30-33.)

With regard to the possibility of dual citizenship, Applicant believes PRC does not recognize dual citizenship between citizens of China and another nation. (Applicant's answer to SOR.) Furthermore, the record contains no evidence that explains PRC law on this subject. However, PRC law concerning dual citizenship is not determinative of this decision because, as discussed below, Applicant considers himself a US citizen only, without allegiance to any other nation. Therefore, PRC law of dual citizenship is largely moot in this case.

Paragraph 2 (Guideline B - Foreign Influence). When Applicant departed China in 1987, he left behind several members of his immediate family, including his mother, two brothers, and one sister. His father is deceased. Applicant's mother is elderly and a homemaker; one brother is a computer instructor at a private school; the other brother is in the publishing business, temporarily unemployed. Neither brother has been in the military, although the unemployed brother once briefly worked part-time for the PRC government. (Tr. 35-36.) Applicant's sister is an elementary school teacher. Applicant telephones his family members about once a month, and each Chinese new year he sends them a total of about \$300-500 as gifts.

Applicant also left behind his wife's parents and her family. The parents-in-law visited Applicant's home on one occasion in about 1995, but Applicant made clear in his testimony that his relations with his wife's parents are distant. ⁽¹⁾ Applicant and his wife are separated, and Applicant knows little or nothing about her parents' occupations or their personal lives. (Tr. 38-39.)

Since arriving in the US sixteen years ago, Applicant has assimilated into American society. He has earned a graduate-level education, he is a naturalized citizen, he travels on a US passport, and he has renounced his former PRC citizenship, to the extent that he can. Since 1996, Applicant has been employed by several American companies as a senior software engineer. (Gov. Ex. 1, SF86.)

Applicant has two children, ages 14 and 8, and both were born in America. (App. Ex. B.) Each child holds a US passport and a Social Security card, and they are members of the YMCA. Applicant is a homeowner, and his mortgage payments are current. He is a registered voter. (App. Exs. D and E.)

POLICIES

Enclosure 2 of the Directive, as amended by DepSecDef Memorandum dated June 7, 2001, sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny or revoke a security clearance (Disqualifying Conditions, hereafter DC) and those that may be considered in deciding whether to grant or continue a clearance (Mitigating Conditions, hereafter MC).

Based upon a consideration of the entire record, I find the following adjudicative guidelines have application in 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..

Disqualifying Conditions applicable:

1. The exercise of dual citizenship.
2. Possession and/or use of a foreign passport.

Mitigating Conditions applicable:

1. Individual has expressed a willingness to renounce dual citizenship.

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 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.

Disqualifying Conditions applicable:

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.

Mitigating Conditions applicable:

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 corce the individual to choose between loyalty to the person(s) involved and the United States.
3. Contact and correspondence with foreign citizens are casual and infrequent.
5. Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities.

The whole person concept. In addition to the above guidelines, the Directive provides in Para. E.2.2.1. that under the "whole person concept" the Administrative Judge shall also consider (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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.

CONCLUSIONS

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted upon to safeguard it 24 hours a day. The Government is therefore appropriately concerned where reliable information indicates an Applicant for clearance may have a preference for a foreign country or may be subject to foreign influence. On a commonsense basis, these circumstances might easily lead to a compromise of classified defense secrets.

With regard to burden of proof in DOHA cases, the Government must prove all controverted facts that tend to demonstrate Applicant is ineligible for clearance. Once this burden is met, the Applicant must overcome the Government's case, if he or she is to prevail, by persuasive evidence in refutation, mitigation, or changed circumstances. However, the Applicant always bears the ultimate and overall burden of proving it is clearly consistent with the national

interest to grant him or her a security clearance. Furthermore, the Directive provides "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, Para. E2.2.2.) Thus, the Applicant's burden is a heavy one.

Paragraph 1 (Guideline C - Foreign Preference). In addition to DoD policy guidance set forth above, an AsstSecDef issuance known generally as the CI memorandum⁽²⁾ further clarifies DoD policy regarding the possession and/or use of foreign passports. The C3I Memorandum requires that "any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United States Government."

In this case, Applicant entered the US in 1987 to advance his education, and he earned a master's degree. Subsequently, Applicant and his wife became US citizens, and Applicant was issued a US passport which he used to visit China one time in 2000. Applicant retained his PRC passport, but he never used it and he returned it to the PRC embassy in September 2002. Applicant states credibly he is a US citizen only, and he claims no dual citizenship with China.

Applicant has taken steps to mitigate the Government's security concerns under guideline C, and DC 1 and DC 2 are offset by Applicant's affirmative actions to divest himself of the PRC passport, in keeping with requirements of the C3I Memorandum. Furthermore, Applicant testified credibly he is not a dual citizen, and he has no interest in retaining vestiges of PRC citizenship. Paragraph 1 of the SOR is concluded in Applicant's favor.

Paragraph 2 (Guideline B - Foreign Influence). Applicant has contacts and communications with four members of his immediate family who reside in China. His mother is elderly and unemployed, his brothers work in China's private sector, and his sister is a school teacher. Applicant has visited his family only one time in sixteen years, although he calls them once per month and he sends nominal monetary gifts each new year. There is no evidence indicating Applicant has any other ties to China (*e.g.*, financial, business, or professional) beyond the existence of his family relations. (MC 5.)

In determining Applicant's eligibility for clearance, the guidance of DC 1 must be considered. Applicant has family member who are residents of PRC, and this presents a potential for pressure or coercion. However, the family members are not employed by the PRC government (MC 1), and during the last 16 years neither Applicant nor his family has been subject to any outside interest or pressure. Applicant's contacts with his family are more than casual or infrequent, but the extent and nature of these contacts are generally confined to family matters, supplemented by nominal monetary gifts once a year. (MC 3.)

Regarding his bonds with America, during the last 16 years Applicant has developed strong ties to this country. He is a naturalized citizen, he uses his US passport, and he received a graduate education from American universities. His two children were born here, and they hold American passports. Applicant is a homeowner, and he has worked for several American firms. He votes in American elections, and he expresses a credible intent to remain an American citizen. This evidence outweighs other evidence pointing to a lingering connection to Applicant's country of birth.

Applicant is separated from his wife, and for many years he has been estranged from her family who lives in China. Applicant knows practically nothing about them. Under these circumstances I conclude there exists little reason to form a security concern based upon Applicant's relationship or contacts with his parents-in-law. Overall, the evidence supports a conclusion in Applicant's favor as to allegations in Paragraph 2 of the SOR.

In reaching the above conclusions, I have considered each factor of the whole person concept. On the basis of all the evidence, I conclude Applicant brings himself favorably within the whole person concept, as set forth in the Directive.

On balance, it is concluded the Government has met its burden of proof under each paragraph of the SOR. For his part, the Applicant has introduced persuasive evidence in mitigation which offsets the Government's allegations of foreign preference and foreign influence.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of

Enclosure 3 of the Directive are:

Paragraph 1. Foreign Preference: For the Applicant.

Subpara. 1.a.: For the Applicant.

Paragraph 2. Foreign Influence: For the Applicant.

Subpara. 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 Applicant's request for a security clearance.

Burt Smith

Administrative Judge

1. "Oh, I didn't speak to them for many years. They don't like me too much." (Tr. 38.)
2. Memorandum, ASD for Command, Control, Communications and Intelligence, Subject: *Guidance to DoD Central Adjudication Facilities (CAF) Clarifying the Application of the Foreign Preference Adjudicative Guideline*, August 16, 2000.