

DATE: June 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05086

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Thomas M. Abbott, Esquire

SYNOPSIS

This 66-year-old engineer was born in China, came to the U.S. to teach in 1986, and became a U.S. citizen in 1995. His elderly father, two brothers, and in-laws still reside in China, but Applicant has minimal other ties to that country, where he and his family suffered under the Communist regime. He completed his education, began a professional career, and established a family life in the U.S., with his wife and young son. Applicant has shown strong ties and feelings toward the U.S. He has credibly expressed an understanding of his security obligations and his intent to act only in support of U.S. interests. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On December 23, 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 March 26, 2003, 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 initially assigned to another Administrative Judge, but was reassigned to me on April 18, 2003, because of caseload considerations. A Notice of Hearing was issued on April 26, 2003, and the hearing was conducted on March 13, 2003. The transcript was received at DOHA on May 28, 2003.

FINDINGS OF FACT

Applicant is a 66-year-old senior engineer employed by a defense contractor. The SOR contains four allegations under Guideline B (Foreign Influence) 1.a., 1.b., 1.c., and 1.d. In his response, Applicant admits all four allegations, with

explanations. Those admissions are adopted as findings of fact.

After considering the totality of the evidence derived from the oral testimony and documentation, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's 94-year-old father is a citizen of and resides in China. [\(1\)](#)

1.b. - Applicant's brothers are citizens of and reside in China.

1.c. - Applicant's parents-in-law are citizens of and reside in China.

1.d. - Applicant's sister-in-law was a citizen of China, but now resides in Canada and has applied to become a Canadian citizen (Tr at 42, 51).

Applicant was born in Shanghai, China, in November 1936. He graduated from a Chinese university in 1959. From 1966 to 1976, under the period of the Cultural Revolution, he was forced to do manual labor, including "hard farmer's work," and to attend political classes. This was because he was considered to be part of the educated class and because his father had been a business owner (Tr at 32 - 34). He was "always afraid" of being punished by the Communists (Tr at 33). He came to the U.S. in 1986 as a visiting scholar at a U.S. university (GX 2), remained in the U.S. and obtained employment in his field of expertise. He applied for his "Green Card" in 1989, and became a citizen in May 1995 (GX 3). He obtained a U.S. passport in July 1995 (GX 2).

In October 1995 he returned to China to visit his family, and did not travel outside their home area. His father is a 93-year-old retired business owner. Applicant has not been contacted by any Chinese official and has had no contact with his former colleagues at the Chinese university. His wife, also born in China, and also an engineer, became a U.S. citizen in July 2001 (AX M). She returned to China for a short visit with her parents in 1999. She agrees with her husband's feelings about the U.S. and China and would also report any contacts by Chinese agents or officials (AX F).

Based on a document submitted by a work colleague, who has had a security clearance himself since 1966, and who has known Applicant for years, I find that Applicant is recognized as a valuable asset to the U.S., who "meticulously complies with the required security procedures and policies," and has never done anything causing a doubt about his loyalty to the U.S. (AX C, at page 2; *see, also* AX E, and AX G). His scientific contributions and publications are extensive (AX J, AX K, and AX L). Based on evidence from his son, I find that Applicant was persecuted by Chinese authorities during the so-called "Cultural Revolution" and took advantage of his being allowed to leave China to attend an American university to seek and obtain political asylum from the U.S. government 15 years ago (AX D). Applicant's statement that he is a citizen only of the U.S. has not been disputed by the Government. His old Chinese passport expired years ago, and he keeps it only as a record of the past (Tr at 44 - 46).

Applicant's conduct and statements since moving to the U.S. in 1986 demonstrate his strong ties to the U.S., which he views as allowing him to live "a life of freedom" (Tr at 38). He and his wife have an eight-year-old daughter born in the U.S. (Tr at 39). He has no loyalty to China and is willing to bear arms for the U.S., even against his former homeland, and even though he is now 66 years old (GX 2). Although he is close to his family, they have no influence over him "to act against the best interest of the U.S." (*Id.*). His views his contacts with his relatives as not frequent (Tr at 41 - 44). If he "was ever approached by [Chinese] officials for espionage purposes, [he] would immediately report it to security and to U.S. government authorities" (GX 2 and Tr at 43).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to 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 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 vulnerable to coercion, exploitation, or pressure.

Conditions that could raise security concerns 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.
2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse, foreign influence or duress exists.

Condition that could mitigate security concerns include:

1. A determination that the immediate family members(s), . . . cohabitant, or associates in a foreign country 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.

Eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the Directive's "whole person" concept, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that 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.

If the Government meets its initial burden of proof and establishes conduct that creates security concerns 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 conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the applicant.

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."

CONCLUSIONS

The crux of the Government's concerns is that Applicant may be vulnerable to foreign influence. Under Guideline B, the evidence shows that Applicant's elderly father, two brothers, and his wife's parents are citizens of and reside in China. The sister-in-law has moved to Canada and has begun the process of becoming a Canadian citizen.

There are no stated concerns or evidence indicating that Applicant retains any business, financial, educational, or benefit-related ties to China. The underlying issue to be decided is whether Applicant's family ties, as established by the totality of the record, present an unacceptable risk.

I have taken into consideration the fact that the other country involved is the Peoples Republic of China. While an individual with any personal ties to that country is not automatically ineligible to hold a DoD security clearance, the relationships described in the record evidence must be carefully considered and given appropriate weight in the evaluation.

Applicant is 66. He suffered for many years under the Communist regime in China, but was finally allowed to leave China to study in the U.S. in 1979 and again, to teach, in 1986. Although Applicant has been an engineer of considerable note and recognition in his field, he has not been subjected to any pressure in the past. The nature and history of the family relationships contain no evidence suggesting that any of his relatives would ask Applicant to act improperly in the future.

In summary, I find most persuasive Applicant's age, his history, in China, where he suffered during the Cultural Revolution, saw his family lose their business, and his reasonable fear of persecution if he and his wife returned to China, which was the basis for the granting of political asylum by the U.S. in 1988. His contributions to American society, the expansion of his family in the U.S., and the respect with which he is viewed by his colleagues, all add credibility to his statements of allegiance to the U.S. and defense of U.S. interests.

Mitigation

Under Guideline B, Disqualifying Condition 1 (family in a foreign country) is applicable, but Mitigating Condition 1 is also applicable, since I conclude that (1) Applicant's father, brothers, and in-laws are not agents of China or in a position to be exploited by China, and even more importantly, (2) Applicant has established that he would not comply with any security-related requests made or pressure applied by his relatives in China or elsewhere.

I conclude that Applicant would respond by rejecting any attempts to apply pressure. I find credible his statement that he would report any improper contacts by family and relatives in China. As a result, I conclude that the relationships cited in the SOR do not establish a risk that he is potentially vulnerable to coercion, exploitation, or pressure that could result in the compromise of classified information.

FORMAL FINDINGS

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

Guideline B (Foreign Influence) For the Applicant

SOR 1.a. For the Applicant

SOR 1.b. For the Applicant

SOR 1.c. For the Applicant

SOR 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.

BARRY M. SAX

Administrative Judge

1. After the 1948/1949 takeover by the Communists, China became known as the Peoples Republic of China.