

DATE: May 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06478

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Jonathan Beyer, Department Counsel

FOR APPLICANT

David C. Merkin, Esq.

SYNOPSIS

Thirty-nine year old naturalized American Applicant demonstrated that he is a man of good character and personal integrity. However, he was unable to mitigate foreign influence, based on the fact his parents are citizens and residents of Peoples' Republic of China and Applicant returns there to visit them. Clearance is denied.

STATEMENT OF THE CASE

On August 22, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to any classified information and recommends that his case be submitted to an Administrative Judge. On September 10, 2002, the Applicant provided a response to the SOR, admitting all allegations and requested a hearing. This case was assigned to the undersigned Administrative Judge on November 22, 2002. A notice of hearing was issued on December 2, 2002, and the hearing was held on December 23, 2002. During the hearing, two Government exhibits, eleven Applicant exhibits, and the testimony of the two Applicant witnesses, including the Applicant, were received. The transcript (Tr.) was received on January 2, 2003.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 39-year-old database administrator who is employed by a federal contractor with the State Department.⁽¹⁾ He was born in the People's Republic of China (PRC).⁽²⁾ After attending a Chinese university, Applicant came to the United States to attend graduate school in 1987.⁽³⁾

In 1991, Applicant received his master's degree, specializing in physical chemistry.⁽⁴⁾ Specializing in chemistry and bio-chemistry, he received his doctorate degree in 1994.⁽⁵⁾ Applicant became a naturalized citizen of the United States in 1999.⁽⁶⁾

From 1994-1996, Applicant was employed as a research associate by a federal health agency. He worked as a programmer for a federal contractor with another federal health agency from 1996-1997 and as a database administrator for a federal contractor with the Department of Transportation from 1997-1999. Applicant was a consultant for another federal contractor in 1999 and obtained his current position later that same year.⁽⁷⁾

Applicant married in 1997.⁽⁸⁾ His wife was born in the PRC and came to the United States as a student in 1986.⁽⁹⁾ Applicant's wife became a naturalized citizen of the United States in 1999.⁽¹⁰⁾ They have a three-year-old son who is a natural born citizen of the United States.⁽¹¹⁾

Applicant's parents are both citizens and residents of the PRC.⁽¹²⁾ His father is a 66-year-old retired electrical engineer, who has never worked for the Chinese government.⁽¹³⁾ Applicant's mother is a 67-year-old retired editor for a Chinese university.⁽¹⁴⁾ She suffered a heart attack in 2001.⁽¹⁵⁾

Applicant telephonically communicates with his parents once a month.⁽¹⁶⁾ He has provided financial support to his parents of as much as \$100.00 per month over a one to two year period.⁽¹⁷⁾ Applicant's mother came to the United States for the birth of his son in 1999 and developed a strong tie to her grandson.⁽¹⁸⁾

Applicant has returned to the PRC to visit his parents on four occasions since 1994.⁽¹⁹⁾ He does not visit anyone but his parents when he returns to the PRC.⁽²⁰⁾ On these occasions, Applicant is required to register with a local security office.⁽²¹⁾ He expects to make another trip to the PRC when his son is a little older.⁽²²⁾ Aside from his parents, all of Applicant's friends and other contacts are in the United States.⁽²³⁾ He would like to bring his parents to the United States but neither he nor they can afford a home and medical coverage for them in America.⁽²⁴⁾

The PRC is a totalitarian communist regime who's interests are inimical to those of the United States. For decades, the PRC has conducted extensive political, military, and economic espionage against the United States.⁽²⁵⁾ Chinese-Americans are particular targets of the PRC's espionage against the United States.⁽²⁶⁾ Americans who visit the PRC and stay with friends or relatives, must register with local police.⁽²⁷⁾

POLICIES

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (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.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline B - Foreign Influence: A security risk may exist when an individual's immediate family, including co-

habitants, 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.

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 (Disqualifying Condition 1).

E2.A2.1.2.6. Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. (Disqualifying Condition 6).

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 (Mitigating Condition 1).

CONCLUSIONS

Guideline B - Foreign Influence

Undisputed evidence in this case presents two disqualifying conditions pertaining to the Applicant. Disqualifying Condition 1 applies because Applicant's parents, with whom he maintains a close relationship, are citizens and residents of the PRC. Disqualifying Condition 6 also applies. Given conditions in the PRC, Applicant's travels there, including four trips between 1994 and 1999, may make him vulnerable to coercion, exploitation, or pressure by the PRC.

Applicant has offered evidence in an effort to mitigate the disqualifying conditions. To establish Mitigating Condition 1, he has presented evidence that his parents are not agents of the PRC and he argues that the evidence shows that they are not in a position to be exploited by the PRC. The evidence to which Applicant refers is that Applicant's parents are both retired and receiving retirement benefits. However, I fail to see how this evidence demonstrates that Applicant's parents are not in a position to be exploited. To the contrary, the fact that they are reliant upon retirement income and medical benefits in the PRC would appear to make them vulnerable to exploitation by the PRC.

Applicant has also attempted to demonstrate that the nature of his visits to his parents does not make him subject to coercion, exploitation, or pressure by the PRC. ⁽²⁸⁾ He emphasizes that he does not contact anyone other than his parents and family on these visits. Although Applicant may attempt to keep a low-profile during his return visits to China, he has not mitigated the fact they expose him to coercion, exploitation, or pressure by the PRC. Although he describes it as being like a home association, Applicant acknowledges that he has had to register with the local security office where his parents reside during these visits. This confirms other evidence of record that foreign visitors who stay with friends or family in the PRC must register with the local police. Given such monitoring in the PRC and the nature of its espionage aimed at Chinese-Americans, Applicant has failed to demonstrate that even his low-profile visits do not make him vulnerable to possible coercion, exploitation or pressure.

Applicant argues the applicability of the decisions of administrative judges in ISCR Case No. 01-23911 (Apr. 30, 2002) and ISCR Case No. 01-26031 (May 30, 2002). Another administrative judge's decision is not binding but may be considered as persuasive authority. ISCR Case No. 01-26893 at 4 (App. Bd. Oct. 16, 2002). However, the cases cited by Applicant are clearly distinguishable from the facts of his case. ISCR Case No. 01-23911 involves a natural born U.S. citizen who subsequently became a dual citizen of New Zealand, a country which does not present the threat to the national security of the United States that does the PRC. In ISCR Case No. 01-26031, the applicant's father had left the PRC and had become a permanent resident of the United States and her sister had become a permanent resident of Germany. Although applicant's mother was still residing in China, arrangements had been made for her to obtain a visa

and immigrate to the United States to live with the applicant. Therefore, the facts are significantly distinguishable from this case, since Applicant's parents reside in the PRC and there is no evidence that they are about to emigrate.

Family ties in a foreign country raises a prima facie security concern that requires the applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him." ISCR Case No. 99-0532 at 6 (App. Bd. Feb. 27, 2001). This is especially critical given the espionage effort against the United States in which the PRC is engaged and the threat to the national interest of the United States that it represents. Clearly, Applicant has failed to meet his burden of persuasion in this case.

The DOHA Appeal Board has recognized that "an applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country hostile to the United States." ISCR Case No. 01-26893 at 8. This decision should not be interpreted in any sense to impugn the character or loyalty of the Applicant. In fact, the evidence in this case reveals that he is a man of good character and personal integrity. It is also apparent that Applicant's achievements are attributable to his intelligence, hard work and dedication. Consistent with Executive Order 10865, as set forth in Enclosure 1 of the Directive, the loyalty and respect for this country that Applicant professes should not be questioned. [\(29\)](#)

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

DECISION

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Tr. 23.
2. Tr. 19.
3. Tr. 20.
4. Applicant Exhibit H; Tr. 21.
5. Applicant Exhibit I; Tr. 21.
6. Applicant Exhibit J; Tr. 19.
7. Tr. 21-23.
8. Tr. 27.
9. Tr. 26-27.

10. Applicant Exhibit K; Tr. 27.
11. Tr. 27-28; Applicant Exhibit A.
12. Tr. 28; Government Exhibit 1.
13. Applicant Exhibits C and D; Tr. 28-30.
14. Applicant Exhibits E and F; Tr. 30-31.
15. Tr. 46.
16. Tr. 31.
17. Tr. 48.
18. Tr. 32; Applicant Exhibit B.
19. Tr. 46.
20. Tr. 39.
21. Id.
22. Tr. 50.
23. Tr. 38-39.
24. Tr. 46-47.
25. Director of Central Intelligence/Director of the Federal Bureau of Investigation, *Report to Congress on Chinese Espionage Activities Against the United States* (Dec. 12, 1999).
26. Paul D. Moore, *How China Plays the Ethnic Card*, Los Angeles Times (Jun. 24, 1999).
27. U.S. State Department, *Consular Information Sheet - China* (Apr. 11, 2002).
28. Although Applicant addresses Mitigating Conditions 3, 4, and 5 in his final argument, none of these are applicable to this case. Even if Mitigating Condition 3 could apply to parents, Applicant's contact with his parents is not casual and infrequent, based on his own testimony. Mitigating Condition 4 has no applicability because, as Applicant acknowledges, there is no evidence that Applicant has ever been contacted by the PRC or any other country. Mitigating Condition 5 is irrelevant because the Government is not alleging, and there is no evidence, Applicant has a substantial financial interest in the PRC or any in other foreign country.
29. Tr. 36-37.