

DATE: June 4, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06723

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 49 year-old naturalized United States citizen, born in the People's Republic of China. Applicant's immediate family members, including his parents, with whom he has close and continuing contact, and his sister and brother are citizens of and reside in the People's Republic of China. The evidence establishes that Applicant is vulnerable to foreign influence. By not mitigating these foreign influence security concerns, Applicant failed to demonstrate it is clearly consistent with the national interest to grant or continue his security clearance. Clearance is denied.

STATEMENT OF THE CASE

On October 25, 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, issued a Statement of Reasons (SOR) to Applicant which 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on January 30, 2003. A Notice of Hearing was issued on January 22, 2003, and the hearing was held on February 27, 2003. At the hearing, the Government presented five exhibits, admitted without objection, and no witnesses; Applicant presented five exhibits, four of which were offered into evidence, and the testimony of Applicant, himself. The transcript was received on March 11, 2003.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because Applicant's immediate family, and other persons to whom he may be bound by affection, influence, or obligation, are not United States citizens or may be subject to duress. I find as follows:

Applicant is a 49 year old employee of a defense contractor. He was born in the People's Republic of China in 1953, moved to the United States in 1985 and became a naturalized United States citizen in 1998. He has a masters degree in computer science. He is married to a Chinese born, naturalized, United States citizen and has one daughter. He has been married and divorced from two Chinese born women, and, at the time of the marriages, both were Chinese citizens.

Applicant's father, mother, sister, brother and brother-in-law are citizens of and reside in the People's Republic of China. Applicant has another brother-in-law who is a citizen of the People's Republic of China and resides in the United States. (Transcript at 32-33.) Applicant traveled to the People's Republic of China on five occasions between 1994 and 2000 to visit his parents and on at least one occasion to arrange a divorce from his second wife.(Transcript at 33.) Applicant contacts his parents by telephone approximately two times a month. Applicant's parents are retired and receive a pension from the Chinese government.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN INFLUENCE (GUIDELINE B)

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 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 in, a foreign country;

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

E2.A2.1.3.1. A determination that the immediate family member(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.

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where 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 or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the 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."

CONCLUSIONS

Based on the evidence of record, the Government has established reason to deny Applicant a security clearance because of foreign influence. Applicant's immediate family members-both parents and his sister, brother and brother-in-law are citizens of and reside in the People's Republic of China. The Chinese citizenship and residency of members of Applicant's immediate family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001).

As Applicant's immediate family members are citizens of and reside in the People's Republic of China, a country which is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that these family members do not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002.) Based on his five trips to China between 1994 and 2000, in part to visit his parents, and his telephone calls approximately two times a month to them, I cannot conclude that his contact with them is casual and infrequent. Applicant has failed to mitigate these security concerns, thereby failing to demonstrate that it is clearly consistent with national security to grant him the clearance. Accordingly, Foreign Influence Mitigating Condition 1 does not apply to this case, and Guideline B is found against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

DECISION

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

Martin H. Mogul

Administrative Judge