

DATE: October 9, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-08891

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc Curry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Fifty-nine-year-old naturalized U.S. citizen whose mother, sisters, and brother are citizens and residents of the People's Republic of China (PRC) failed to mitigate foreign influence security concerns. By surrendering his PRC passport, Applicant mitigated the foreign preference security concern. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 9 April 2003, DOHA issued a Statement of Reasons (SOR), under the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on 22 April 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 6 August 2003. On 16 September 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on 25 September 2003.

### **FINDINGS OF FACT**

Applicant is a 59-year-old native of the People's Republic of China (PRC). He was raised in the PRC and graduated from one of its premier universities with a six-year degree equivalent to a master's degree. Tr. 20. During the Cultural Revolution (1966-1976), Applicant was ordered to Northwest China to work in the countryside. He remained there four to five years. Tr. 21. Applicant was later able to move back to the East coast where he worked in a tractor factory and then for a city's science committee. Tr. 24-34. Because of his interest in computers and his ability to speak English, Applicant was permitted to travel to the U.S. to work at a university as a research associate. Tr. 35-36.

Applicant arrived in the U.S. in 1987. Tr. 9; Ex. 2 at 1. His wife and children, who were all born in the PRC, were not

permitted to join him until 1991. Tr. 38; Ex. 2 at 1. Applicant's wife became a naturalized U.S. citizen in February 2000. Ex. 2 at 1. Applicant became a naturalized U.S. citizen in November of 2000. *Id.*; Ex. 1 at 1.

Applicant's son, an electrical engineer, became a naturalized U.S. citizen in May 2001. Ex. 2 at 2. He has traveled to the PRC several times on business for his U.S. company. On the date of the hearing, Applicant's son, who was recently married, was in the PRC visiting his in-laws. Tr. 45.

Applicant's daughter is a permanent U.S. resident who intends to apply for U.S. citizenship. *Id.* She is an electrical engineer, but is currently attending law school. Tr. 44, 10.

Applicant has returned to the PRC three times since he came to the U.S. in 1987: For two weeks in April/May 1999, with his wife, for a vacation and to visit relatives; for one week in December 1999 to visit his mother who had had a stroke; and for two weeks, with his wife, in October 2001 to visit his mother and mother-in-law. Ex. 2 at 2.

Applicant was issued a PRC passport on 17 September 1998 with an expiration date of 16 September 2003. He used the passport to travel back to the PRC before he became a U.S. citizen. Ex. 2 at 3. After he became a U.S. citizen, he received a U.S. passport and used it to travel to the PRC in October 2001. Tr. 61. He surrendered his PRC passport to the PRC Embassy in Washington, DC, on 29 January 2002. Ex. A.

Applicant's mother, two sisters, and brother are citizens and residents of the PRC. Ex. 1 at 3-4. He is "close" to his mother and sisters. Ex. 2 at 2. Applicant's mother is 82 years old and has not been well since her stroke in 1999. Tr. 10. She lives with one of Applicant's sisters. Applicant calls them once or twice a week and sends them \$100 a month so they can hire people to assist his mother. Tr. 51-52. As long as his mother is alive, Applicant believes he has a duty to support her. Tr. 12. Applicant's sisters are retired factory workers, his mother a retired school teacher. One sister visited Applicant in the U.S. on the occasion of her son's graduation from a U.S. university. Tr. 54.

Applicant's brother is a recently retired civil engineer. He spent most of his career involved with the dredging of harbors. He visited Applicant in the U.S. once, on his way home to the PRC from Venezuela, where he was working on dredging operations. Tr. 49. Applicant contacts his brother only once or twice a year by telephone.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

### **Guideline B-Foreign Influence**

In the SOR, DOHA alleged Applicant's children are citizens of the PRC but residents of the U.S. (¶¶ 1.a., 1.b.), his mother, brother, and two sisters are citizens and residents of the PRC (¶ 1.c.). A security concern may exist when members of an applicant's immediate family, or other persons to whom he may be bound by affection, influence, or obligation are not citizens of the U.S. or may be subject to duress. Directive ¶ E2.A2.1.1.

The Government established by its evidence and Applicant's admissions that members of Applicant's immediate family are citizens and residents of the PRC (his mother, brother, and two sisters) and his daughter is a citizen of the PRC residing in the U.S. DC 1. A determination that the immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the family member or associate and loyalty to the U.S. is a mitigating condition under Guideline B. MC 1. Applicant presented evidence that his immediate family members are retired workers, not agents of a foreign power.

The inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. Rather, the foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a *position of vulnerability* to be influenced by coercive or noncoercive means, even if there is no evidence that a foreign country has sought to exploit that vulnerability. ISCR Case No. 00-0628 at 5 (App. Bd. Feb. 24, 2003). Thus, in addition to considering the nature of Applicant's contacts with the foreign individual, we must also evaluate (1) whether the country in which the foreign contacts live is hostile to and has interests inimical to those of the U.S., and (2) whether the applicant would have access to information of interest to, and targeted for collection by, that nation.

The PRC is hostile, and has interests inimical, to those of the U.S. The PRC is a totalitarian state that depends on the suppression of its people. The PRC has been involved in espionage against the U.S., both military and economic. While Applicant's contacts in the PRC are not foreign agents, their presence in that country, subject to the pressures of the communist regime, places Applicant in a position of vulnerability that could force him to choose between loyalty to the persons involved and loyalty to the U.S. Applicant's relationship with his mother and sisters is "close." MC 3 does not apply.

### **Guideline C-Foreign Preference**

In the SOR ¶ 2.a., DOHA alleged Applicant possessed a valid PRC passport issued on 17 September 1998 and due to expire on or about 16 September 2003. A security concern may exist when an individual acts in such a way as to indicate a preference for a foreign country over the U.S. because he may be prone to provide information or make decisions that are harmful to the interests of the U.S. Directive ¶ E2.A3.1.1.

The Government established by substantial evidence that Applicant possessed a foreign passport. DC 2. However, Applicant surrendered his passport. MC 4. After reviewing all the evidence, I am convinced Applicant does not have a foreign preference for the PRC over the U.S. Finding is for Applicant.

## FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a.: For Applicant

**DECISION**

In light of all of 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. Clearance is denied.

**James A. Young**

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.