

DATE: February 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09102

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 59-year-old engineer. A native born American of American parents, he married a Chinese national 14 years ago and brought her to the U.S., where she became a U.S. citizen. She has parents and siblings, mostly medical professionals, who remain citizens of and resident in China. Applicant's only ties to China have been through his wife, phone calls about once a month and mail about four times a year. They send about \$1,200 a year by mail to the wife's mother, who is retired. Applicant's ties are infrequent and not close. He credibly avers that he would promptly contact U.S. authorities if any improper contacts were made. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On August 11, 2003, 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.

Applicant submitted an undated but timely response to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The matter was assigned to me on October 7, 2003. A Notice of Hearing was issued on October 30, 2003, and the hearing was conducted on November 17, 2003. At the hearing, Applicant testified but did not offer any exhibits. The Government did not call any witnesses, but offered two exhibits, which were marked and admitted as Government Exhibits (GX) 1 and 2. The transcript (Tr) was received at DOHA on December 3, 2003.

FINDINGS OF FACT

Applicant is a 59-year-old engineer for a defense contractor. The SOR contains four allegations, 1.a. - 1.d., under Guideline B (Foreign Influence). Applicant's response admits SOR 1.a and denies the other three allegations as "incorrect." The admission is incorporated herein as a finding of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Guideline B (Foreign Influence)

1.a. - Applicant's parents-in-law are citizens of and residents in China. ⁽¹⁾ His father-in-law was born in 1931, and his mother-in-law in 1932. His parents-in-law are divorced and live in different parts of China.

1.b. - Applicant has a brother-in-law who is a citizen of and resident in China.

1.c. - Applicant has a sister-in-law who is a citizen of and resident in China.

1.d. - Applicant and his China-born spouse send her mother an average of \$100 per month, usually accumulated and sent every three of four months. The money goes only to the mother (Tr at 19). The father-in-law is remarried and applicant has little contact with him (Tr at 19).

China has long been recognized as a major source of military and industrial espionage against the United States (GX 2 and Tr at 15). Applicant has held a DoD Secret level security clearance since 1986, with no apparent problems (GX 1 at Item 31).

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)

Condition that could raise a security concern and may be disqualifying:

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;

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk.

The 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. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves 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.

CONCLUSIONS

Applicant was born in the United States in 1944. He is not of Chinese origin or ethnicity, but his wife is, having been born in China of Chinese parents. They were married 1990, when she was 29. Applicant's wife speaks English, but her parents and siblings do not (Tr at 22). Their citizenship status and residency are correct as stated in the SOR. That information comes only and directly from Applicant.

Applicant met his wife of 14 years about 16 years ago, while visiting China "for a couple of weeks" as a tourist (Tr at 24 - 26). She spoke some English, although not fluently. They corresponded for about six months, after which Applicant returned to China for another three or four weeks. He then returned home, they corresponded some more, and then, Applicant managed to bring her to the United States on a "fiancé visa" (Tr at 24). They married in 1990. She is presently 42 years old.

His mother-in-law remarried and then was widowed. She is presently 71 years old. She was a gynecologist. She is now retired and living on a pension. The \$1,200 per year that Applicant and his wife send her makes her life a little easier. Applicant's father-in-law, who is still working, acts more as a consultant than as an active surgeon. He is also remarried, and lives with his second wife in a city distant from Applicant's mother-in-law. He is 73 years old. His sister-in-law is a nurse /anesthetist (Tr at 26). His brother-in-law is an orthopedic surgeon and his wife is something like a court administrator in a local Chinese court (Tr at 32, 33). His in-laws know he works on U.S. military aircraft, but little else (Tr at 35). He does not personally feel close to his in-laws, but he is close to his wife and she is close to her parents. He and his wife have visited China to see her relatives perhaps four times in the past 14 years (Tr at 35). They are planning to make another trip to China in the near future, but plans have been postponed because of the present adjudication (*Id.*).

Mail correspondence occurs about four or five times a year (Tr at 30). Other contact with China is generally limited to telephone calls by his wife to her mother, but because the mother is somewhat hard of hearing, the conversation is generally between Applicant's wife and her sister. The calls occur about once a month (Tr at 30). Applicant's wife has strong feelings against her father's new wife and rarely calls him (Tr at 30). On their infrequent visits, Applicant's past is mostly "nodding and smiling" (Tr at 28).

From the totality of the evidence of record, there is no reason to doubt Applicant's candor about his in-laws or his devotion to the interest of the United States. Based on all available evidence, I conclude there is also no question in Applicant's mind as to what his response would be if he were asked to disclose classified information. Even if the Chinese government took "all [my] in-laws hostage and sen[t] me one [finger] joint every week until I give them information, I would go to the security people and tell then this is happening" (Tr 1at 22). Applicant expects to retire by June or July 2004, some four months from now (Tr at 35). He and his wife plan on moving to a warmer city in State A once he retires (Tr at 36).

No one in his wife's family have ever asked him questions about what he does for a living (Tr at 37). Applicant works

on only a limited part of the aircraft program. He has contact with classified information and material sporadically, so he does need a clearance, but he really "doesn't know anything secret any more" (Tr at 38). He has had a DoD clearance for 28 years. He notified his employer when he went to China and again when he married a woman from China (Tr at 39). He learned that he would no longer qualify for "SAR" (as reported in the transcript, but probably "SAP," Special Access Program). Applicant's wife considers herself to be only a U.S. citizen. She has not considered herself to be a citizen of China since she became a naturalized American (GX 1 and Tr at 40).

There is certainly a valid concern with the fact that Applicant's in-laws are citizens of and reside in China. While it certainly possible that anyone's relatives in China might be approached by Chinese intelligence or other agencies to persuade or coerce an applicant in the U.S. to disclose classified information, that reality, though a major concern, must be considered along with all other disqualifying and mitigating factors. The fact that Applicant has had these relatives in China for 14 years, with no attempt by them to improperly approach him does not mean that they will never approach him, but it does affect the risk of such future efforts. The fact that Applicant expects to retire in as few as four months minimizes the risk, as does Applicant's having little actual contact with classified information and/or material. Applicant's relationship with the non English-speaking in-laws is not one that suggests close and warm ties of affection and/or loyalty.

Applicant has studied the Government's concerns with Chinese espionage as discussed in GX 2. As he sees the matter, his expertise is not stated in the document as a major focus of Chinese espionage (Tr at 46). Moreover, his clear understanding of his responsibilities for and feelings for the United States is clear and consistent and supported by his long work history on defense contracts, including 17 years with his current employer. He was born and raised in the U.S., with no ties to China until he met his wife there 16 years ago and married her 14 years ago, and only slight ties since then.

There are absolutely no suggestions in the evidence that his in-laws are likely to be contacted by Chinese authorities, or that they would be able to put improper pressure on Applicant. Applicant's clear statements as to what he would do if approached is convincing, even if not supported by any earlier such conduct does not logically mean that his statement is not entitled to any substantial weight. In the context of all the available evidence, I find his claim of an immediate notification of U.S. or company authorities to be reasonable, based on the totality of the evidence, and persuasive.

In the present matter, Applicant has expressed strong feelings about whom he is, and where his loyalty, allegiance, and obligations belong. From Applicant's testimony and demeanor, I find his testimony to be highly credible. In this context, even with the nature of the foreign government being considered, I find more important and compelling Applicant's evidence as to how he views his obligations to the United States, and how he would respond to any attempts at coercion.

Foreign Influence Disqualifying Condition 1 (family in foreign country) is applicable but, under Mitigating Condition 1, I conclude the relationships "would not constitute an unacceptable security risk."

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

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 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. In this decision, the name China refers to the People's Republic of China.