

DATE: June 18, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-09024

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's foreign contacts, including his wife, (who resides in the United States and is in the process of becoming a United States citizen) and his father, brother and mother-in-law who are citizens of and reside in China, are not associated in any way with the Chinese government, and do not pose a security risk. Clearance is granted.

**STATEMENT OF THE CASE**

On January 8, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 31, 2003, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned Administrative Judge on March 31, 2003. A notice of hearing was issued on April 9, 2003. The hearing was held on May 6, 2003, at which the Government presented one exhibit. The Applicant presented eight exhibits. The Applicant called one witness and testified on his own behalf. The official transcript was received on May 21, 2003.

**FINDINGS OF FACT**

The Applicant is 39 years old and married with two children. He holds a Master's Degree in Electric Engineering and a Doctorate. He is employed by a defense contractor as a Electric Engineer, and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth

in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in China in 1963. He grew up there, and came to the United States in 1996, to pursue his graduate education. He obtained both his Master's and Doctorate Degrees in the United States. He became a naturalized citizen in October 1999. He was sponsored by an American family which allowed him to immigrate to the United States.

The Applicant's father, brother, and mother-in-law are citizens of China and reside there. The Applicant's father is a retired college professor, and is now elderly. The Applicant's brother is a sales representative for a private company, and his mother-in-law is a retired mining company worker.

The Applicant's contacts with his family in China are infrequent. He contacts his brother and father by letter and telephone about once every month or two. His wife may speak to her mother about once every month or two, but he seldom speaks to his mother-in-law.

The Applicant's father, and mother-in-law come to the United States to visit from time to time. At some point, the Applicant or his wife, would like to sponsor the Applicant's father and mother-in-law to come to the United States to permanently reside.

The Applicant's spouse is a citizen of China, and resides with the Applicant. She and the Applicant have two children who are native born Americans. The Applicant's wife is presently in the process of applying for her United States citizenship. (*See*, Applicant's Exhibits A and B). She and the Applicant are hopeful that when she obtains it, she will be able to sponsor her mother to come to the United States to live.

A member of the American family who sponsored the Applicant to come to the United States testified that the Applicant has been a huge success in his career, his school work and his fabulous wife and children. He is considered honest, ethical, loving and kind. Their experience at having the Applicant become a part of their family during the summers and semester breaks while he attended graduate school was a wonderful one that they greatly cherish. The Applicant is highly respected by this family.

Two letters of recommendation submitted on behalf of the Applicant, one from his direct supervisor, the other from a coworker, collectively indicate that the Applicant is an efficient, hard working engineer, with an outstanding work ethic and commitment to meet all of his responsibilities. They give the highest praise for the Applicant's integrity, trustworthiness, loyalty, morality and honesty. He is well respected. (*See*, Applicant's Exhibit C).

## **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

### Foreign Influence

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

1. An immediate family member, or person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

Conditions that could mitigate security concerns:

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 the loyalty of the person(s) involved and the United States.

3. Contacts and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (foreign influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's

adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign influence can raise questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

## **CONCLUSIONS**

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

With respect to the Applicant's eligibility for a security clearance, there are mitigating conditions under Guideline B, of DoD5220.6 which are applicable to warrant the Applicant's access to classified information. I have carefully assessed the degree of actual or potential influence that persons may exercise on the Applicant. I have considered the frequency and nature of his personal contact, his correspondence with the foreign contact, his political sophistication, and the general maturity level of the Applicant. I have carefully considered the Applicant's testimony and his documentary evidence.

The evidence establishes that the Applicant's foreign ties do not subject him to foreign influence. The Applicant came to the United States in 1996 to attend graduate school. Sponsored by an American family, he obtained both his Master's and Doctorate degrees. In 1999, he became a naturalized citizen. He has achieved much in just a few years in America. He is married and has two children who are native born Americans. His wife is presently in the process of applying for United States citizenship. The Applicant has had very little contact with his family in China. Mitigating condition 3, "contact and correspondence with foreign citizens are casual and infrequent" clearly applies in this case. The Applicant's family members in China, including his father, brother and mother-in-law who are citizens of, and reside in China, may possibly, at some point in the future, come to the United States to permanently reside. None of his family in China are associated with the Chinese government in any way, nor are they in a position to be exploited that could force the Applicant to choose between loyalty to them and loyalty to the United States. Thus Mitigating condition 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 the individual to choose between loyalty to the person and the United States", also applies in this case. Based on the foregoing, Guideline B is found for the Applicant.

Considering all the evidence, the Applicant has met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

## **FORMAL FINDINGS**

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: 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 the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge