

DATE: September 3, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09198

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 34-year-old technical analyst has not been shown to have possessed a Chinese passport after becoming a U.S. citizen in 1999. His last visit to China was in 1998, before he became a U.S. citizen. No foreign preference has been established. He has three relatives who are citizens of and reside in China, but contacts are causal and minimal, as are his contacts with an acquaintance in Singapore. Applicant has shown deep ties to the U.S., and is unlikely to respond favorably to any efforts to act against U.S. interests. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On February 4, 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.

On February 21, 2003, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, without a hearing. Department Counsel issued a File of Relevant Material (FORM) on April 7, 2003. The FORM instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Any response was due by May 16, 2003, but no response to the FORM was received. The matter was assigned to me for resolution on May 27, 2003.

FINDINGS OF FACT

Applicant is a 34-year-old technical analyst for a defense contractor. The SOR contains two allegations, 1.a. and 1.b., under Guideline C (Foreign Preference) and three allegations, 2.a., 2.b., and 2.c., under Guideline B (Foreign Influence). In his response to the SOR, Applicant denies SOR 1.a. and admits 1.b. He admits SOR 2.a. and 2.b., and denies 2.c. Attached to the response is a two-page explanation of his answers (GX 3).

After considering the totality of the evidence derived from the contents of the FORM, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline C (Foreign Preference)

1.a. - Applicant was born in the People's Republic of China (PRC) in 1968 to Chinese parents. His father came to the United States in 1985 to work as a medical researcher. The father brought Applicant (age 18) and his mother and sister to the United States in 1986. Applicant became a permanent resident of the U.S. in 1993 (GX 4). He renewed his PRC passport in 1997 and used it once, to visit the PRC in 1998. Applicant became a naturalized U.S. citizen in 1999, at age 31, at which time he no longer considered himself to be a citizen of China.

The allegation that Applicant possessed the PRC passport until September 30, 2002 was denied by Applicant and has not otherwise been established by the Government's evidence. That date appears only in Applicant's Security Clearance Application of November 20, 2000 where, in response to Question "**15. Your Foreign Activities - Passport** - In the past seven years, have you had an active passport that was issued by a foreign government," Applicant truthfully answered "Yes" and stated the issue date as "1997/10/01" and the expiration date as "2002/09/30" (GX 6).

The question did not ask if Applicant presently possessed the passport, as of November 20, 2000. In the attachment to his response to the SOR, Applicant stated "Since the day when I became a U.S. citizen [July 28, 1999], I have no longer possessed the Chinese passport and I travel only on my U.S. passport" (GX 3, at page 3). In his earlier sworn statement of February 20, 2002 (GX 4), Applicant stated: "Now that I am a U.S. citizen, I no longer have the Chinese passport, and plan to only use my U.S. passport for any future travel." Applicant considers himself to be only a citizen of the U.S. (GX 4 and GX 6). Based on the totality of the evidence, I find that Applicant did not continue to possess a PRC passport after he became an American citizen on July 28, 1999. I find that the Government has not established that this allegation is correct as stated in the SOR.

1.b. - From April 30, 1998 to May 10, 1998, Applicant visited the PRC at his mother's request, to see his ailing grandfather. He used his PRC passport because he was not yet an American citizen and did not possess a U.S. passport. The grandfather now has legal permission to become a permanent resident of the U.S. (GX 3). Applicant has not traveled to the PRC since becoming an American citizen in 1999

Guideline B (Foreign Influence)

2.a. - Applicant's aunt and uncle are citizens of and residents in the PRC. His uncle visited the U.S. in 2002, and sought resident alien status here, but was unable to obtain permission. The uncle returned to the PRC and Applicant has had no contact with him or his aunt since that time.

2.b. - Applicant's cousin is a citizen of and a resident in the PRC. Applicant has no contact with this cousin and would not be influenced by this cousin.

Applicant has no friends or acquaintances residing in the PRC. All of Applicant's immediate family members now reside in the U.S. None of Applicant's relatives in the PRC, or anyone else there, have ever asked him to do anything against U.S. interests (GX 4)

2.c. - Applicant has an associate who is a citizen of Singapore. Applicant met the man while attending a college class the man was giving in 2001, but has not seen him since the man relocated last year. The individual has never asked Applicant to do anything against U.S. interests. (GX 4).

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.

Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE C (Foreign Preference)

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

None that are applicable under the facts of this case.⁽¹⁾

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;

Conditions that could mitigate security concerns include:

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(s) involved and the United States;

3 Contacts and correspondence are casual and infrequent;

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

This 34-year-old Applicant came to the United States with his parents in 1986, when he was 18. He has resided here ever since. He obtained a degree in computer science from a State university in 1996 and has been working in this field in the same state since that time.

The stated Guideline C (Foreign Preference) concerns allege only that Applicant possessed a valid PRC passport from October 1, 1997 to September 30, 2002, which is taken to mean that he continued to possess the PRC passport after he became a U.S. citizen in July 1999. As discussed above, under **Findings of Fact**, this allegation, which is based on language in Applicant's security clearance application (GX 9), is not supported by that language. Moreover, Applicant has twice stated that he no longer possessed the PRC passport after becoming a U.S. citizen in July 1999 (GX 3 and GX 4).

Based on the totality of the record, I conclude the Government *has not* established the validity of the allegation in SOR 1.a. Applicant *has* established that he has not knowingly been a citizen of the PRC, nor has he possessed a valid PRC passport, since becoming a U.S. citizen. Consequently, none of the possible disqualifying conditions have been established. On this basis, I conclude there is no real issue of security significance.

As to SOR 1.b., while Applicant did visit the PRC from April 30, 1998 to May 10, 1998, he did so at a time when he was not yet a U.S. citizen. The SOR's concern is not clearly established. Applicant went to the PRC at the request of his mother to visit an ailing and elderly uncle. He stayed 10 or 11 days and implicitly used his PRC passport, because he did not yet have a U.S. passport or U.S. citizenship. Applicant has not been to the PRC since becoming a U.S. citizen. Based on the totality of the record, I conclude this issue is not of security significance.

The stated Guideline B (Foreign Influence) concerns relate to an aunt, an uncle, and a cousin, who are citizens of, and reside in, the PRC (SOR 2.a. and 2.b.) and an acquaintance who is a citizen of Singapore (SOR 2.c.). The existence of the four individuals does come within Disqualifying Condition (DC) 1. The significance of the other country being the PRC is understood. However, based on the nature of the overall record, the relationships involved, Applicant's history since coming to the United states, and the minimal contacts shown, I have determined that the family members and/or associates in question do not constitute an unacceptable security risk (Mitigating Conditions (MC) 1 and MC 3). After considering all of the evidence of record on these issues, I conclude there is minimal risk of any of the four individuals seeking to persuade, pressure, or coerce Applicant to act against U.S. interests and minimal risk that Applicant would agree to any such efforts.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a.. For the Applicant

Subparagraph 1.b. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 2.a. For the Applicant

Subparagraph 2.b. For the Applicant

Subparagraph 2.c. 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. As Applicant views his citizenship status, he was no longer a citizen of the PRC after he became a U.S. citizen in July 1999, so he has never knowingly exercised dual citizenship (DC 1). In addition, since becoming a U.S. citizen in 1999, he has not possessed or used a foreign passport (DC 2). No other indicators of possible foreign preference are shown by the record evidence.