

DATE: January 14, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11056

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

Peregrine Russell-Hunter, Esq., Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, employed as a senior research scientist by a defense contractor, was born in the

Peoples' Republic of China (PRC) and received a degree in mathematics from a university in the PRC. He was selected for graduate study abroad and holds a doctorate in applied mathematics from a European university. He is an internationally recognized expert in computational fluid dynamics and his work has direct military applications. Applicant's wife is a citizen of the PRC, as are his mother, his two brothers, and his wife's parents. Applicant's continuing ties of affection and obligation to family members in the PRC create the potential for foreign influence that could result in the compromise of classified information. 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 May 12, 2003, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence) of the Directive. Applicant answered the SOR in writing on June 16, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on July 17, 2003. On September 2, 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. At the close of the hearing, Department Counsel moved to amend subparagraph 1.e. of the SOR to conform with the testimony of Applicant.<sup>(3)</sup> Without objection, the motion was granted. DOHA received the transcript (Tr.) of the proceeding on September 15, 2003.

### **FINDINGS OF FACT**

In his answer to the SOR, Applicant admitted the factual allegations as set forth in subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e., involving Guideline B, Foreign Influence. Applicant's admissions are incorporated as findings of fact. After a complete and thorough review of the record, I make the following additional findings of fact:

Applicant was 40 years old at the time of his hearing and employed as a senior research scientist by a defense contractor. He was born and raised in the Peoples' Republic of China (PRC), and he received his undergraduate degree from a university in the PRC. He was selected by the PRC to study for his doctorate in applied mathematics at a university in Europe. After receiving his Ph.D., he came to United States to work. His academic research speciality is computational fluid dynamics applied to modeling simulations of detonations, blasts, and explosions. His work has military and counter-terrorism applications. (Tr. 29, 39.) Applicant is recognized as an expert in his field. He has written many scientific papers and travels to international meetings to discuss his research findings. Applicant attended professional meetings in China in 2000 and 2001. He had plans to attend a third professional meeting in China in 2003. When the meeting was cancelled because of an epidemic, he and his wife traveled to China anyway to visit family members and friends there.

Applicant married his wife, a citizen of the PRC, in the United States in 1995. They have two children who were born in the United States. Applicant became an American citizen in 1999. His wife became a permanent resident of the United States in 2001 (Ex. 2, at 2.)

Applicant's mother and two brothers are citizens of the PRC and reside there. Applicant's mother is a widow and retired. Prior to retirement she worked as an accountant at a PRC bank. Her health has been poor. Applicant has sent her money to assist with her medical expenses. He speaks with his mother by telephone approximately every two weeks. (Tr. 69.) One of Applicant's brothers is a government employee in the PRC. The other brother is employed by a bank. (Tr. 71-74.) Both brothers are married and have families.

Applicant's father-in-law and mother-in-law are also citizens of the PRC and reside there. (Tr. 79.) Applicant's father-in-law is a retired medical doctor and his mother-in-law is a retired English teacher. (Tr. 90-91.) Applicant's wife is an only child. (Tr. 79.) She speaks with her parents by telephone once a month. (Tr. 80.)

Applicant has ongoing contacts with two friends who are ethnic Chinese. One friend is a citizen and resident of France and works in a water treatment plant. The other, a friend of Applicant's since boyhood, is a physician and citizen and resident of the PRC. (Tr. 75-77.)

Applicant submitted a list identifying 55 of his professional publications as his Exhibit C. He also submitted as exhibits publications he presented at professional meetings as well as additional evidence of his professional standing and accomplishments. (Ex. D, E, F-1, F-2, F-3, and G.)

## 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 and mitigating conditions 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.

Adjudicative Guideline B, Foreign Influence, applies to this case. Under Guideline B a security concern may exist when an individual's immediate family 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 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. E2.A2.1.1.

Guideline B identifies several conditions that could raise security concerns:

An immediate family member of a person to whom the individual has close ties of affection or obligation is a citizen of or resident in a foreign country (E2.A2.1.2.1.);

The individual seeking clearance shares living quarters with a person or persons, regardless of citizenship status, if the potential for adverse foreign influence or duress exists (E2.A2.1.2.2.);

Relatives, cohabitants, or associates who are connected with any foreign government. (E2.A2.1.2.3.)

The individual seeking clearance displays conduct which may make him vulnerable to coercion, exploitation, or pressure by a foreign government (E2.A2.1.2.6.).

Guideline B mitigating conditions that might apply to this case include:

A determination that the immediate family members (spouse, mother, brothers) or associates 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 persons involved and the United States (E2.A2.1.3.1);

Contact and correspondence with foreign citizens are casual and infrequent (E2.A2.1.3.3.).

## CONCLUSIONS

In the SOR, DOHA alleged, under Guideline B of the Directive, that Applicant's close familial and friendship ties with and obligations to citizens of the PRC created the potential for foreign influence that could result in the compromise of classified information. The SOR alleged that Applicant's wife is a citizen of the PRC who resides in the United States (1.a.); that his mother is a citizen and resident of the PRC (1.b.); that his wife's parents are citizens and residents of the PRC (1.c.); that his two brothers are citizens and residents of the PRC (1.d.); and that Applicant has a friend who is a citizen and resident of France and a friend who is a citizen and resident of the PRC (1.e.).

A Guideline B security concern exists when an individual seeking clearance is bound by ties of affection, influence, or obligation to immediate family, close friends, or professional associates in a foreign country, or to persons in the United States whose first loyalties are to a foreign country. A person who places a high value on family obligations or fidelity to relationships in another country may be vulnerable to duress by the intelligence service of the foreign country or by agents from that country engaged in industrial espionage, terrorism or other criminal activity. The more faithful an

individual is to family ties and obligations, the more likely the chance that the ties might be exploited to the detriment of the United States.

Applicant's case requires the recognition that the PRC has historically acted in a hostile manner to U.S. security interests and often seeks to collect as much intelligence as possible from individuals of ethnic Chinese heritage. Additionally, because Chinese Americans comprise a significant proportion of those employed in the U.S. research and development sector and in defense-related industries, they can be identified by the PRC as possible targets for information gathering. (4)

Applicant admits all allegations of the SOR which raise security concerns under Guideline B, subparagraphs E2.A2.1.2.1, E2.A2.1.2.2, E2.A2. 1.2.3, and E2.A2.1.2.6. His wife is a citizen of the PRC and resides with Applicant in the United States. She remains close to her parents, who are PRC citizens and reside in the PRC. Applicant's wife telephones her parents monthly. The record shows that the wife's parents came to the United States twice, once when she received a Master of Science degree in electrical engineering and once when she was ill following the birth of the couple's first child. (Tr. 80-81.)

Applicant is close and a good son to his mother, who is a citizen of the PRC and resides there. She visited him in the United States in 1993. (Tr. 70.) He telephones his mother twice a month. Applicant's mother has been in poor health, and he has sent her money so that she can obtain medical treatment. Applicant's filial conduct toward and financial support of his mother have the potential to make him vulnerable to coercion, exploitation, or pressure by a foreign government under disqualifying condition E2.A.2.1.2.6. The record indicates that mitigating condition E2.A2.1.3.1 applies only in part to the facts of Applicant's case. While his widowed mother is not an agent of a foreign power, she is in fragile health and could be exploited by a foreign power in a way that could force Applicant to choose between loyalty to her and the United States. Additionally, Applicant's actions toward his mother make it clear that his relationship with her is not casual but intense and seriously concerned about her welfare. Thus, mitigating condition E2.A2.1.3.3. does not apply to Applicant's relationship with his mother, nor does it apply to his relationship with his wife and his wife's parents.

Applicant has one brother who is a banker and one who is employed by a governmental environmental agency in the PRC. Because of the political and economic organization of the PRC, both of Applicant's brothers' livelihoods depend upon their government connection, thus raising a concern under disqualifying condition E2.A2.1.2.3. Applicant has two friends who are citizens of or who reside in foreign countries. E2.A2.1.2.1. These disqualifying conditions are mitigated in part. While, pursuant to mitigating conditions E2.A2.1.3.1., nothing in the record indicates that Applicant's brothers or his friends are agents of a foreign power, there is no evidence to show that they are not in positions to be exploited by a foreign power in a way that might force Applicant to choose between them or their well-being and his loyalty to the United States. Additionally, while record evidence suggests that Applicant's contacts with his two friends are casual and infrequent, pursuant to mitigating condition E2. A2.1.3.3., nothing in the record indicates that his contacts with his brothers, while infrequent, are casual.

Despite Applicant's sincere demeanor and his assurances that he is not a security risk, the circumstances of his situation argue otherwise. He has put forward no evidence that could mitigate the security concerns discussed herein and demonstrate that he would not be vulnerable to foreign influence that would result in the compromise of classified information. Accordingly, allegations in subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e under Guideline B of the SOR are concluded against the 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

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against 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.

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**Joan Caton Anthony**

**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.
3. Transcript, pages 112-113.
4. *See* Paul D. Moore, "How China Plays the Ethnic Card," The Los Angeles Times, June 24, 1999, submitted by Department Counsel as Ex. 3 for Administrative Notice.