

KEYWORD: Foreign Influence

DIGEST: Applicant, born in the People's Republic of China (PRC), became a United States citizen in 1999. She has five siblings, who are citizens of PRC and reside in PRC. Her contacts with them are infrequent. None of these family members, or their spouses or children, belong to, participate in, or are active with any government agency of PRC. They are not in a position to be exploited by PRC in a way that could force Applicant to choose between loyalty to these family members and her loyalty to the United States. Applicant's strong attachment to the United States and minimal ties to PRC makes it unlikely that she would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

CASE NO: 02-27404.h1

DATE: 05/26/2004

DATE: May 26, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27404

**DECISION OF ADMINISTRATIVE JUDGE  
MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT***Pro Se***SYNOPSIS**

Applicant, born in the People's Republic of China (PRC), became a United States citizen in 1999. She has five siblings, who are citizens of PRC and reside in PRC. Her contacts with them are infrequent. None of these family members, or their spouses or children, belong to, participate in, or are active with any government agency of PRC. They are not in a position to be exploited by PRC in a way that could force Applicant to choose between loyalty to these family members and her loyalty to the United States. Applicant's strong attachment to the United States and minimal ties to PRC makes it unlikely that she would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated October 27, 2003, to the Applicant which detailed 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. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, or denied. The SOR was based on foreign influence (guideline B) concerns because of the foreign residency and/or citizenship of close family members.

Applicant filed a notarized response dated December 2, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On February 2, 2004, the case was assigned to me to conduct a hearing, and pursuant to formal notice dated February 18, 2004, a hearing was held on March 19, 2004.

At the hearing, Department Counsel offered four documentary exhibits (Government Exhibits 1- 4) and no witnesses were called. Applicant offered six documentary exhibits (Exhibits A-F) and offered her own testimony and that of one other witness. The transcript (TR) was received on April 6, 2004.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) of the Directive. The SOR contains five allegations, 1.a., through 1.e., under Guideline B. Applicant admitted SOR allegations 1.b., 1.d., and 1.e. Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and testimony of Applicant and the additional witness, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 41 years old. She is employed as a Senior Infrastructure Specialist by a United States defense contractor that wants her to have a security clearance. She received two Masters degrees, in Computer Science and Engineering, the latter in 1990 in a United States university.

Applicant was born in PRC. She came to the United States in 1986. She became a naturalized United States citizen in 1999. She is divorced and has two children, a girl who is eight, and a boy, three. Both children were born in the United States and are United States citizens.

Applicant's mother, a PRC citizen, has lived in the U. S. with Applicant since 2000. She intends to apply for citizenship when she is eligible. Applicant's father came to the United States in 2003, and he also intends to apply for citizenship when he is eligible (Tr at 40).

Applicant's niece came to the United States in 1999 to pursue an education and a career. Applicant adopted her niece, who is now 22 years of age, to help her remain in this country (Tr at 45, 46). She is now married, and her husband, a native born United States citizen, testified that his wife plans to remain in the United States and to apply for citizenship when she is eligible (Tr at 22-27).

Applicant has three sisters and two brothers, who are citizens of and reside in PRC. She speaks to her siblings approximately one time a year. None of these family members, or their spouses or children, belong to, participate in, or are active with any government agency of PRC or have served in the PRC military (Tr at 40-43).

Since Applicant came to the United States in 1986, she has traveled to PRC two times, in 1993 and 2002. Before her trip in 2002, she consulted with the security manager of her company to confirm that such a trip was not unauthorized. She debriefed with the manager upon her return to this country. This trip was made primarily to help prepare her father for his move to the United States, and also to show her children the advantages that they had by living in the United States rather than PRC (Response to SOR).

Applicant does not anticipate receiving any inheritance or other financial interest from PRC. She has estimated her financial holdings in this country to be worth in excess of five hundred thousand dollars (Tr at 49, 50).

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (*See* Directive, Section E2.2.1. of Enclosure 2).

Based upon a consideration of the evidence as a whole, I find the following guideline and concern most pertinent to an evaluation of the facts of this case:

### **FOREIGN INFLUENCE (GUIDELINE B)**

E2.A2.1.1. The Concern: 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 not citizens of the United States or may be subject to duress. These situations 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.

## **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

**CONCLUSIONS** Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence) . Applicant has five siblings, who are citizens of and reside in PRC. The PRC citizenship and residency of Applicant's family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him.

The evidence of existence of immediate family members, who are citizens of and reside in PRC comes within Disqualifying Condition (DC) E2.A2.1.2.1, immediate family members, or persons to whom the individual has close ties of affection or obligation, who are citizens of, or resident in, a foreign country. The fact that the foreign country in question is PRC, a country under Communist rule, is also a concern; but that fact is not automatically controlling.

The primary factors I have considered include: the lack of government involvement of Applicant's family members and her limited and infrequent contact with them, the fact that her parents and her adopted daughter now live in the United States and plan to remain here, her very powerful devotion her two children, Applicant's history since coming to the United States, and her strong feelings concerning this country. Based on the nature of the overall record and the totality of the evidence, I have determined that her family in PRC do not constitute an unacceptable security risk, and Mitigating Conditions (MC) E2.A2.1.3.1, a determination that the immediate family member(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 loyalty to the person(s) involved and the United States, applies. MC E2.A2.1.3.3. also applies because Applicant's contacts with her siblings in PRC are casual and infrequent.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, she would resist it, and would report the incident to the proper authorities.

### **FORMAL FINDINGS**

#### **Paragraph 1. Guideline B: FOR APPLICANT**

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For 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.

Martin H. Mogul

Administrative Judge