

KEYWORD: Foreign Influence

DIGEST: Applicant is a 49-year-old employee of a defense contractor working in a defense agency. She was born in China and came to the U.S. in 1987 and became a citizen in 1999. Applicant's parents and five siblings are citizens of and live in China. Since 1987 she has had only one telephone contact with her siblings until 2002 and since then approximately four times a year with a sister-in-law who is ill with leukemia. She has only a few contacts each year with her parents. She is alienated from the government of China and has no desire to return. Clearance is granted.

CASENO: 02-27614.h1

DATE: 09/13/2004

DATE: September 13, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-27614

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a 49-year-old employee of a defense contractor working in a defense agency. She was born in China and came to the U.S. in 1987 and became a citizen in 1999. Applicant's parents and five siblings are citizens of and live in China. Since 1987 she has had only one telephone contact with her siblings until 2002 and since then approximately four times a year with a sister-in-law who is ill with leukemia. She has only a few contacts each year with her parents. She is alienated from the government of China and has no desire to return. Clearance is granted.

### STATEMENT OF THE CASE

On February 23, 2004, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated March 1, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 3, 2004, a complete copy of the file of relevant material (FORM), consisting of nine documents, was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She did so on May 28, 2004. The case was assigned to, and received by me on June 18, 2004.

## FINDINGS OF FACT

Applicant admitted the two factual allegations pertaining to foreign influence under Guideline B but denied the security implications the facts raise. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made:

Applicant is a 49-year-old employee of a defense contractor working in a defense agency. She was born in China and came to the U.S. in 1987 with her husband and four-year-old son. After the actions of the Chinese government at Tiananmen Square in 1989 they opted to stay in the U.S. and she became a citizen in 1999.

Applicant's parents and five siblings are citizens of and live in China. Since 1987 she has had only one telephone contact with her siblings until 2002. Since that time she has had telephone contacts approximately four times a year with a sister-in-law who is ill with leukemia. She has provided occasional funds in small amounts to her.

Since 1987 she has had only one letter or postcard contact with her parents each year until 2002 when she occasionally spoke to her parents when they were visiting the ill sister-in-law. One brother sells bus tickets and the other four siblings are retired blue collar workers. Her father worked for the railroad. None are agents of the government.

She has visited China twice in the past nine years, once each in 1995 and 2001. The only trip after becoming a U.S. citizen was with her husband and son to introduce their grown son to her family. She does not intend to return.

## 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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. See Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. See *Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Executive Order No. 12968 § 3.1(b).

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny her a security clearance because of foreign influence. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at 33-34 (App. Bd. Feb. 8, 2001)

"A security risk 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."  
(E2.A2.1.1) Having immediate family members who are citizens of, and residing in a foreign country, may raise a disqualifying security concern. (E2.A2.1.2.1.)

Such security concerns could be mitigated by 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." (E2.A2.1.3.1.) Also, contact and correspondence with foreign citizens is minimal. (E2.A2.1.3.3.)

While parents living in a country with which the U.S. has had difficult relations in the past but is forging new ties, raises some security concerns, it should not be conclusive of raising such a level of disqualifying condition that it could not be mitigated by effective separation over a long period of time from those relatives living abroad. The burden of overcoming the prima facie case presented by the government is high but should not be impossible. Applicants supplied extensive documentation concerning her siblings, her travel, and a reasoned analysis as to her behavior and the possibility of pressure from anyone to compromise national security.

Applicant's demonstration of lack of contact with her parents and siblings shows an awareness of and intent to create a new life in the U.S. that separates her from the contacts and possible pressures from her country of birth. Her one financial contact for a sick relative is insufficient to outweigh her separation from her country of origin. Her travel there has been infrequent and has now terminated. I conclude that she has mitigated the security concerns and that a clearance should be issued.

### **FORMAL FINDINGS**

Formal Findings as required by the Directive (E3.1.25), are as follows:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

**DECISION**

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Charles D. Ablard

Administrative Judge