

DATE: June 29, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-28310

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Nygina T. Mills, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is potentially subject to foreign influence where her siblings, in-laws, extended family members, and friends are citizens and residents of the People's Republic of China. Clearance denied.

### **STATEMENT OF THE CASE**

Applicant challenges the 15 January 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance. <sup>(1)</sup> She answered the SOR on 2 February 2004 and requested a decision without hearing. She did not respond to the File of Relevant Material, issued 2 April 2004. The record closed on 8 May 2004, the date the response was due at DOHA. The case was assigned to me on 20 May 2004.

### **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR, except for the allegations of subparagraph 1.d. <sup>(2)</sup> and 1.j.; accordingly, I incorporate those admissions as findings of fact. A 59-year-old employee of a defense contractor, she seeks access to classified information. She has not previously held a clearance.

Applicant was born in what is now the People's Republic of China (PRC) in 1944. She grew up in China, was educated there, married there, and raised a family there. She was employed at the Shanghai Municipal Bureau of Standards from 1971 to 1991. When she left, she was the Chief of Research and Development. She appears to have been the object of some official scrutiny by government officials when she and her coworkers prepared a banner (never displayed) in support of the protesters in Tiananmen Square in 1989.

It appears that Applicant and husband first came to the U.S. sometime after 1991. <sup>(3)</sup> The circumstances of her immigration to the U.S. do not appear in the record. Applicant became a naturalized U.S. citizen in September 1999; she obtained her U.S. passport the same month. Her husband became a U.S. citizen in August 1999. Her daughter became a

U.S. citizen in January 2004.

Applicant's parents are both dead. However, her siblings are all citizens and residents of the PRC. She has regular contact with her sister, whom she has visited during her return trips to the PRC. She is estranged from her two brothers because she refuses to send them money or sponsor their immigration to the U.S. She also has several extended family members and friends who are citizens and residents of the PRC. She maintains contact with them when she visits the PRC.

Applicant returned to the PRC in 1993 as an interpreter for her employers (an accountant and an attorney) who had business meetings there. She returned to the PRC in June 1997 and November 1998 to visit her aging father, returned again in October 1999 to visit him when he fell ill, and returned for a last time in October 2000 to spread his ashes into the sea. Applicant's PRC passport was originally valid from 1991 to 1995, but was extended to December 1999. Presumably, Applicant used her PRC passport to travel to the PRC in 1997 and 1998 (as she was not yet a U.S. citizen), but it is not clear from the record what passport she used to travel to the PRC in 1999 (when she had two valid passports) or 2000 (when she apparently had only a U.S. passport).

Applicant's mother-in-law and sister-in-law are residents of the PRC residing in the PRC. Her husband contacts his family weekly and sends \$1,000.00 or more annually to support his 85-year old mother. Until recently, he returned to the PRC annually to visit his family.

The PRC is a repressive, totalitarian government with foreign policy goals antithetical to the U.S. It has an active, effective intelligence service that targets U.S. intelligence and economic information, and operates against its citizens in the U.S. The PRC does not recognize dual citizenship of its citizens who become naturalized U.S. citizens.

The record contains no character references or information on Applicant's work performance.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. 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.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **FOREIGN INFLUENCE (CRITERION 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

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

E2.A2.1.3. Conditions that could mitigate security concerns include:

None.

## **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**

The Government established its case under Guideline B and the Applicant failed to mitigate the case against her. Applicant lived a substantial portion of her adult life in the PRC and worked for the same employer for 20 years. Her ties of obligation and affection to relatives and friends in the PRC are clear. She returned to the PRC regularly until her father died, but her contacts (and her husband's contacts) to family and friends still residing in the PRC remain strong. Given these contacts, Applicant has a heavy burden to establish that these family members and friends are not agents of a foreign government or otherwise not in a position to be exploited. Applicant's evidence does not overcome the Government's case, particularly where she herself was a government employee. I resolve Guideline B against Applicant.

## **FORMAL FINDINGS**

Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

## **DECISION**

In light of all 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.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. Because her daughter became a naturalized U.S. citizen on 15 January 2004.
3. Aside from the SOR and answer, the only substantive evidence in the FORM is the Applicant's December 2001 clearance application which reflects her attendance at an educational institution in the U.S. in 1992, a contact known in the U.S. since 1993, her use of an American first name from 1991 to 1999, and her husband's use of an American first name since 1992. In addition, Applicant reported having a Chinese passport issued in January 1991.