

DATE: June 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28739

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign family ties have been mitigated and do not raise a security concern. Clearance is granted.

STATEMENT OF THE CASE

On October 27, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on November 3, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on February 5, 2004. A notice of hearing was issued on March 17, 2004, scheduling the hearing for April 21, 2004. At the hearing the Government presented four exhibits. The Applicant presented no exhibits and testified on her own behalf. The record was left open to allow the Applicant an opportunity to submit additional evidence. The Applicant submitted one Post-Hearing Exhibit consisting of thirteen pages. The official transcript (Tr.) was received on May 7, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibits and the testimony. The Applicant is 31 years of age. She holds a master's Degree in Electrical Engineering. She is employed as an Electrical Engineer for a defense contractor. She seeks a security clearance in connection with her employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible

for clearance because she has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant was born in the People's Republic of China in 1972 and raised in a small farming village. At the age of ten, the Applicant was selected to attend acrobat school sponsored by the local Chinese Government. She left home and studied acrobatics until the age of sixteen. At sixteen, she had the opportunity to come to the United States on an H-1 Visa to perform. Realizing that her acrobatic career would be over when she turned twenty, and desiring to stay in what she described to be the most powerful, beautiful, full of freedom, country with lots of opportunities, after finishing her tour in the United States, the Applicant did not return to China, but decided to stay in the United States. She hired an attorney to help her to get a student visa to allow her to pursue her education. She attended high school and then worked her way through college.

In 1995, the Applicant married her husband, a citizen of China who resides with the Applicant in the United States. He is a permanent legal resident of the United States, currently applying for United States citizenship. They have a six week old infant daughter who was born in the United States. The Applicant became a United States citizen in 2000.

The Applicant's mother resides with the Applicant in the United States. She is a citizen of China, but a permanent legal resident of the United States.

The Applicant has one brother and five sisters who are citizens of China and reside there. Her brother is considered spoiled and does not work. She contacts him by telephone about once or twice a month. She contacts her sisters in China about once a year.

One of her sisters in China is an accountant, the others are housewives. Their husbands are farmers. None of her family in China are employed by or have ever been associated with the Chinese government. None of her family in China are associated with the Communist party.

The Applicant has no bank accounts, assets or property in China. She does not send money to her relatives in China. She has purchased a house in the United States.

The Applicant's husband's mother, father and sister are citizens of China and currently reside there. The Applicant has monthly contact with them through her spouse by telephone.

The Applicant traveled to China in 1998, 1999, 2000 and 2002. She hopes to return to visit China in 2008 to take her daughter to the Olympics. She travels using her United States passport.

Mitigation.

Performance Evaluations of the Applicant from the periods 2000 through 2003 indicate that she consistently "exceeds expectations" or "meets" performance objectives and requirements in every category.

A letter of recommendation from the Applicant's supervisor indicates that she is reliable and conscientious in the performance of her duties. She completes her assigned tasks on time and provides a quality product. She is a hard worker and well respected among her colleagues.

Character reference letters indicate that the Applicant is a capable, respectable, trustworthy person. She has a dedicated work ethic and a strong sense of integrity. She is considered an outstanding citizen and engineer.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each

security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Foreign Influence

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: (1) not citizens of the United States or (2) 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.

Condition that could raise a security concern:

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:

1. A determination that immediate family member(s), spouse, father, mother, sons daughters, brothers, sisters), cohabitant, or associates(s) in questions 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) and the United States;
3. Contact and correspondence with foreign citizens are casual and infrequent.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the

evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates a foreign preference and has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign influence has a direct and negative impact on her suitability for access to classified information.

This 31 year old Applicant came to the United States as a teenager and has lived in the United States for the past fifteen years. She is a United States citizen. She obtained her advanced education, established her family, and made the United States her home. Although her brother, five sisters and in-laws reside in and are citizens of China, the rest of her family reside in the United States. The Applicant's husband is in the process of becoming a United States citizen and they have a six week old daughter who was born here. The Applicant's mother also resides here in the United States. None of the Applicant's family members in China or in the United States have ever been affiliated with, employed for, or agents of, the Chinese Government. Therefore, mitigating condition 1 applies.

In addition, the Applicant's contact with her brother and sisters in China is casual and infrequent. Mitigating condition 3 applies. The Applicant has significant assets in the United States and none in China. Other than with her siblings and in-laws with whom she has limited contact, the Applicant has, for the most part, cut all of her ties with China. The Applicant credibly testified that there is no situation that could ever occur that would force her to reveal classified information to any unauthorized individual no matter what their relationship to the Applicant. She has no foreign ties or contacts that could potentially influence her. Therefore, I find that there is no situation that could create the potential for foreign influence that could result in her compromise of classified information. Accordingly, the Applicant's request for a security clearance must be granted under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subparas. 1.a.: For the Applicant

1.b.: For the Applicant

1.c.: For the Applicant

1.d.: For the Applicant

1.e.: For the Applicant

1.f.: For the Applicant

1.g.: For the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge