

DATE: June 28, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29619

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is potentially subject to foreign influence where her parents and brother are citizens and residents of the People's Republic of China (PRC), and where her husband is a citizen of the PRC who uses his PRC passport to travel to the PRC on business. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 27 October 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of her clearance. ⁽¹⁾ She answered the SOR on 7 November 2003 and requested a decision without hearing. She did not respond to the File of Relevant Material, issued 11 March 2004. The record closed on 17 April 2004, the date the response was due at DOHA. The case was assigned to me on 28 April 2004.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly I incorporate those admissions as findings of fact. A 40-year-old programmer/analyst for a defense contractor, seeks permanent access to classified information. She has held an interim clearance for three years.

Applicant was born in the People's Republic of China (PRC) in 1963. She grew up in China, was educated there, and married there. Her son was born in the Netherlands in 1990 with derivative PRC citizenship. The son--a minor--became a legal permanent resident (LPR) of the U.S. in 2000 and will be eligible to become a U.S. citizen in 2005.

It appears that Applicant and husband first came to the U.S. in approximately January 1993, when Applicant came to a major U.S. university to pursue her master's degree in engineering. ⁽²⁾ Beyond that, the circumstances of her immigration to the U.S. do not appear in the record. Applicant became a naturalized U.S. citizen in June 1999; she

obtained her U.S. passport the following month.

Applicant's husband is a citizen of the PRC and a LPR of the U.S. Although he intends to reside permanently in the U.S., there is no evidence that he intends to become a U.S. citizen. He has had a PRC passport since 1985. He uses this passport to travel to the PRC for his employment, which requires him to meet with PRC governmental officials.

Applicant's parents and brother are citizens and residents of the PRC. She has regular contact with them and provides approximately \$800.00 per year financial support to her parents. She traveled to the PRC in August 1999 to visit her family. It is not clear from the record what passport she used to travel to the PRC in 1999 as she had both a valid U.S. and PRC passport at that time.

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.

Applicant's supervisor reported that she is an excellent employee and that she has complied with both the letter and spirit of U.S. Government and company security policies during the three years she has had an interim clearance.

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, except regarding the citizenship of her son. He is an LPR of the U.S. and resides with Applicant in the U.S. As a minor, he could not become an LPR until age ten, which is when he became an LPR in 2000. He is eligible to become a U.S. citizen in 2005. He is clearly not an agent of the PRC and his residence in the U.S. makes it unlikely the PRC could use him to pressure Applicant. I resolve subparagraph 1.e. for Applicant.

Applicant lived a substantial portion of her adult life in the PRC. Her ties of obligation and affection to relatives in the PRC are clear. She maintains regular contact with her family and provides financial support to her parents. Her husband--a PRC citizen--travels to the PRC on a PRC passport to conduct his business with PRC governmental officials. The PRC is hostile to U.S. interests and conducts active intelligence operations against the U.S. The PRC is known to target its citizens residing abroad--regardless of their claimed citizenship--for purposes of obtaining sensitive information. Given the regularity of her contacts with family in the PRC and her husband's business travel there, Applicant has a heavy burden to establish that her family members or her husband's contacts are not agents of a foreign government or otherwise not in a position to be exploited, or in the case of her husband's contacts, in a position to exploit him or Applicant. Her evidence fails to overcome the Government's security concerns. I conclude Guideline B against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: For the Applicant

Subparagraph f: 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. Clearance is denied.

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. Aside from the SOR and answer, the only substantive evidence in the FORM is the Applicant's March 2001 clearance application. In her application, Applicant also reported having a Chinese passport from September 1987 to December 1999.