KEYWORD: Foreign Influence
DIGEST: The Applicant is a naturalized American citizen from the People's Republic of China (PRC), who has lived in the United States since 1990. Her parents and sister are also American citizens. The Applicant's brother continues to live in the PRC, but her relationship with him is infrequent and casual. The Applicant's husband is a Permanent Legal Resident of the United States from the PRC. His parents live in Sweden. None of the persons are agents of a foreign power or in a position to influence the Applicant to make a decision adverse to the United States. Adverse inference is overcome. Clearance is granted.
CASENO: 02-30503.h1
DATE: 01/28/2005
DATE: January 28, 2005
In Re:

SSN:
Applicant for Security Clearance
ISCR Case No. 02-30503
DECISION OF ADMINISTRATIVE JUDGE
WILFORD H. ROSS
<u>APPEARANCES</u>

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

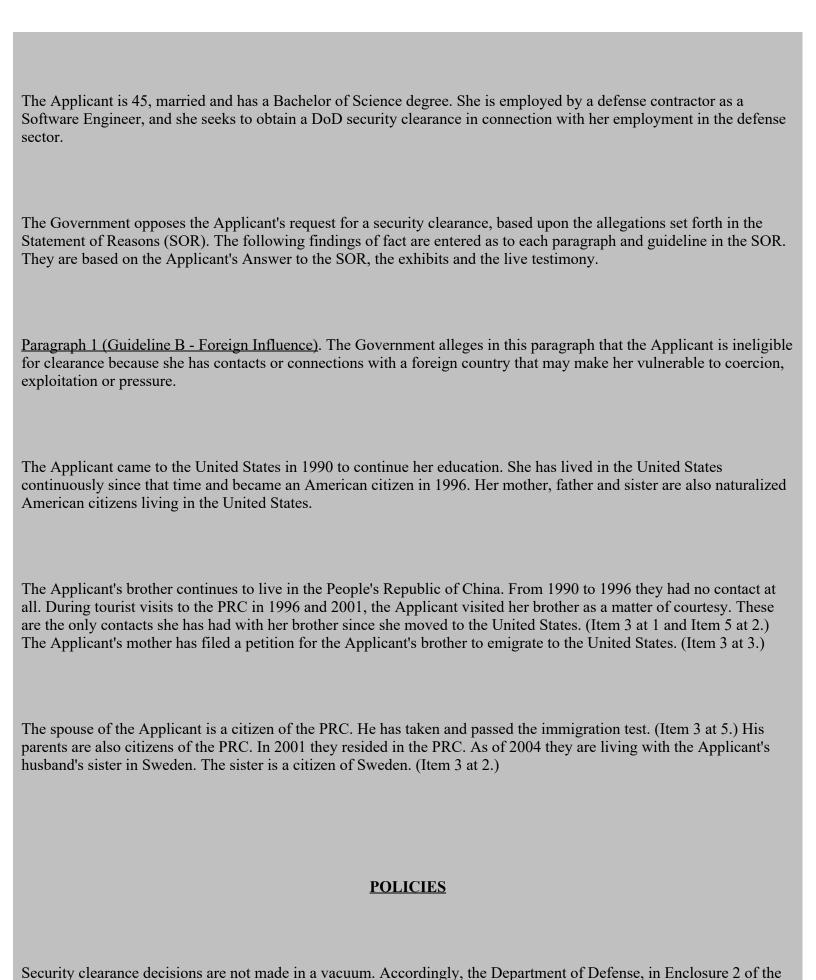
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STATEMENT OF THE CASE

On April 26, 2004, 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 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.

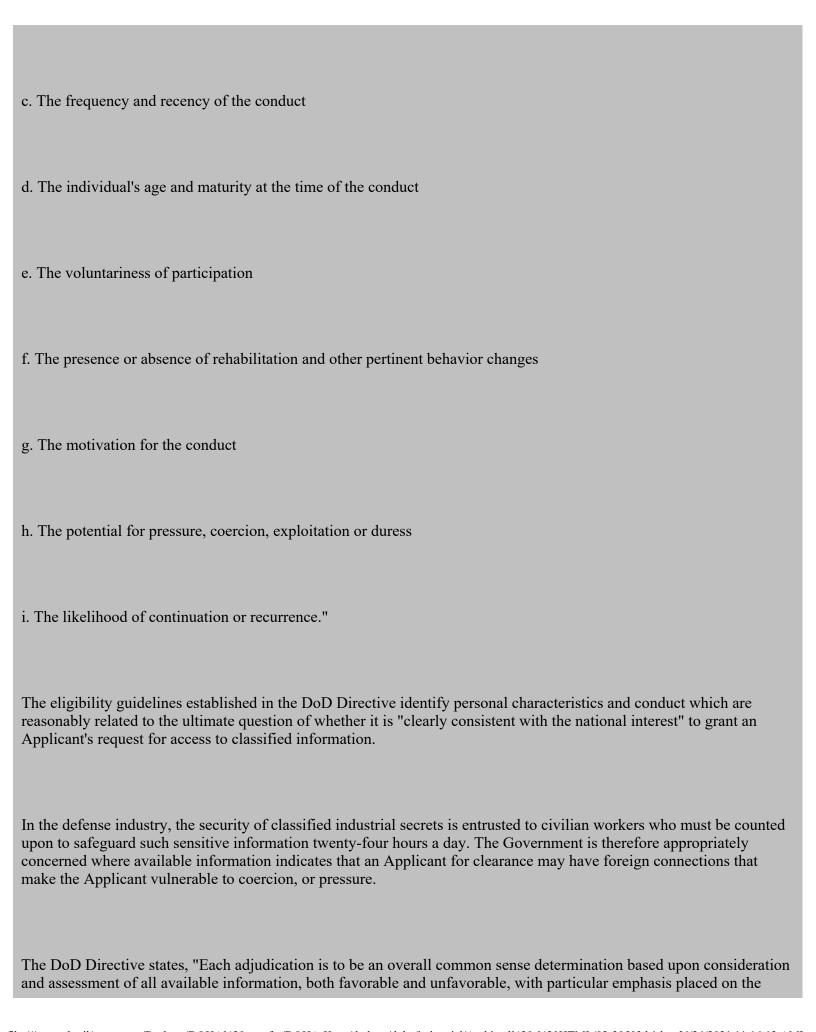
The Applicant responded to the SOR in writing on May 14, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on August 4, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt the FORM on August 10, 2004, and elected not to submit any additional information. The case was received by the undersigned for Decision on November 1, 2004.

FINDINGS OF FACT



1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance

determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. 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:
Guideline B (Foreign influence)
Conditions 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 include:
(1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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;
(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 factors [General Factors]:
a. The nature, extent and seriousness of the conduct
b. The circumstances surrounding the conduct, to include knowledgeable participation



seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant's brother is a citizen of the PRC, and continues to live there; that she visited him twice in 14 years; that her husband is a Permanent Legal Resident of the United States waiting to become a citizen; and that her in-laws are citizens of the PRC, currently living in Sweden (Guideline B).

The Applicant, on the other hand, has successfully mitigated the Government's case. The Applicant's relationship with her brother is very attenuated. Except for her brother, the rest of the Applicant's family are American citizens. Her contacts with him have been perfunctory. Under the particular circumstances of this case, they are casual and infrequent.

The Applicant's husband has applied to be an American citizen and has passed the test. His parents, while still citizens of the PRC, currently live in Sweden with his sister, a Swedish citizen. They are not agents of a foreign power, or in a position to be coerced by a foreign power.

Disqualifying Factor 1 applies to this case: (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). That factor is, however, overcome by the application of Mitigating Factors 1 (A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(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

