

DATE: January 29, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-31668

## **DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Kathryn D. MacKinnon, Esquire, Department Counsel

#### **FOR APPLICANT**

Gary Rigney, Esquire

### **SYNOPSIS**

Applicant mitigated security concerns over foreign influence raised because her mother and brother are citizens of the People's Republic of China ("China"). Given the evidence of Applicant's long history of responsible conduct in the United States (U.S.), I think it improbable that foreign pressure on her brother (who remains institutionalized in Macau) or on her mother ( a retired doctor, who now lives in the U.S. with Applicant) would create a situation that could result in the compromise of classified information. Neither has any ties to the government of China. Applicant's references attest to her good character and professionalism. Clearance is granted.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on May 16, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.<sup>(1)</sup> The SOR alleges specific concerns over foreign influence (Guideline B) in paragraph 1. Applicant replied to the SOR allegations in an Answer notarized on May 27, 2003, and requested a hearing.

The case was assigned to Department Counsel who attested it was ready to proceed on September 12, 2003. The case was assigned to me on September 16, 2003. Subsequently, Applicant retained counsel and a mutually convenient date for hearing was agreed to. A Notice of Hearing<sup>(2)</sup> issued on September 23, 2003, set the matter for October 6, 2003. At the hearing the Government introduced three exhibits which were admitted into evidence (Exhibits 1-3). Applicant's counsel called Applicant to testify and called six other witnesses. He offered three exhibits (Exhibits A through C) which were admitted into evidence. Department Counsel asked that I take Official Notice of one document (ON I). (TR 51-53) The transcript (TR) was received on October 15, 2003.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant, a 36-year-old employee, began working for a defense contractor (Employer #1) as an engineer in State #1 in February 2002. In June 2002 she completed a Security Clearance Application (Standard Form 86) and requested a security clearance which she needs for the position. (Exhibit 1; TR 44) Earlier she worked for Employer #2 in State #1 beginning in May 2001 to February 2002. She received a Master of Science degree in May 2001 from a university in State #1. (Exhibit 1; TR 43)

Applicant was born in the People's Republic of China but moved to Macao in 1980 as a teenager. She left Macao in 1989 to study in the U.S. She decided to leave Macao after she had organized a demonstration after the Tiananmen Square incident. At the time Macao was a Portuguese protectorate and the Chinese had no control; but in 2000 Macao was returned to Chinese control. She was married to a U.S. citizen in January 1997. She became a naturalized U.S. citizen in May 2001. Her husband is a civilian employee of a U.S. defense agency in State #1. (Answer; Exhibits 1, 2; TR 20, 35-43; 48; 50-51)

### **Foreign Influence**

When Applicant completed her SF 86 forms, she disclosed that her parents and brother were citizens of the People's Republic of China, who lived in Macao, a special administrative region of the People's Republic of China. Her father, who had been educated as a physician in Canada, returned to China. Her mother who was originally from Hong Kong, went to China to study medicine where she met her husband and they married in 1965. He died in September 1995. Applicant's mother came to the U.S. in February 2003 and sold her property in Macau. Applicant's mother now lives with Applicant; she has become a permanent resident of the U.S. (The mother has to live in the US for four years and nine months to be eligible to become a U.S. citizen which she intends to do.) The mother, a retired pediatrician, now babysits for her grandchild in State #1. (Answer; Exhibit 1; ON I; TR 13; 20-27, 43-44, 46; 56-58)

Her brother, now 33, was born with Down's Syndrome and has been in an institution since we was born. He remains in Macau where he is employed by a church who provide him a place to live. Applicant was not raised with him and is not close to her brother. She last saw him in 1995 after her father died. Her mother last visited in 1996 when the son was not able to recognize her. He has remained in a Catholic-funded private institution since 1980 to present. (Answer; Exhibit A; TR 13; 27-33; 57-58) Applicant has no contacts with her brother any more. (TR 46)

When she was a teenager Applicant and her family were allowed to travel to Macau in 1980 as her mother had family who supported them. After Applicant moved to the U.S., she traveled to Macau three times from 1995 to June 1999 on her travel documents from Macau which she used to go to Hong Kong to prevent the loss of her right to travel there. She never had a Chinese passport. She traveled to Macau in 1995 for her father's funeral, in 1998 when her mother was ill, and in 1999 to help her mother move to a new home. However, once Applicant became a U.S. citizen and had a U.S. passport, she no longer needed to use her Macau travel documents. (Answer; Exhibit 3; TR 44-45; 54-61)

Applicant has no intent to return to China or Macau. (TR 44; 48) Even though Chinese law does not recognize dual citizenship, Applicant renounced her Chinese citizenship in September 2003. (Exhibit B; TR 46-48) She has a U.S. passport and would only travel on that passport in the future. (TR 49)

Applicant attested that at any hint of any coercion or pressure on herself or her family she would immediately report such coercion to the FBI. (TR 46, 49)

### **References**

A co-worker for Employer #1 has worked with Applicant Since June 1999. He testified that Applicant is a good worker. (TR 63-66)

A former supervisor testified that she had been an intern at his company and had very good work habits. He is a retired military officer; he had no reservations about her having a security clearance. (TR 67-68)

A friend who met Applicant in 1999 when they were both students testified favorably about her. (TR 71-74)

The university facility security officer who has known Applicant since 1989 testified on her behalf and recommended her for a security clearance. Applicant was always truthful in her representations to this official. She was "very dependable, punctual and reliable." (TR 75-79)

A co-worker from Company #2 who had known Applicant since 2001 testified on her behalf as an individual who was always truthful. (TR 81-84)

Applicant's husband testified on her behalf. He has had a clearance for ten years and works for a military agency in State #1. Previously, he served in the military. He testified that his wife has no contact with anyone in China or Macau. (TR 85-91)

Applicant provided favorable letters of reference from her academic advisor for his master's degree, from a neighbor who has known her for seven years, from a business acquaintance who has known her for one year, and from a university professor who knew her for five years. The later professor described her as "intelligent, hard working" person with a "strong sense of integrity, morality and honesty.:" (Exhibit C)

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

#### **Guideline B - Foreign Influence**

**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: (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.**

#### **Conditions that could raise a security concern and may be disqualifying include:**

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;
3. Relatives, cohabitants, or associates who are connected with any foreign government;

#### **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;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government,

and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## CONCLUSIONS

### **Foreign Influence**

Applicant has mitigated the Government's security concerns over possible foreign influence raised by Applicant's close ties of affection to citizens of a foreign country: she has a mother who is a citizen of China but now lives in the U.S. with Applicant, and she has a brother who has Down's Syndrome and is a citizen of China who remains in Macao in a religious institution. The security concern under Guideline B, Foreign Influence, is that 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: (1) not citizens of the United States or (3) or have relatives who are connected with any foreign government who may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

While I have considered these concerns, I conclude Applicant has presented evidence to meet the very heavy burden<sup>(3)</sup> those circumstances presents. These security concerns are mitigated by the fact that Applicant's mother no longer has significant ties to China as she is retired and lives in the U.S. Her only family ties to China are her brother who is institutionalized there and with whom she has no contact. Thus, any risk of foreign duress or influence on Applicant and/or her immediate family would appear to be slight and clearly manageable.

Moreover, Applicant made evident that at any hint of any coercion or pressure on herself or her family she would immediately report such coercion to the FBI. Given Applicant's mother's residency in the U.S. and special circumstances of her impaired brother with whom she has no contact, I find their ties to foreign governments are minimal and that there is no substantial likelihood that she would be subject to duress. Given the many witnesses testimony on Applicant's history of responsible conduct, I conclude Applicant is not vulnerable to duress merely because of these family ties. While she traveled to Macau on her travel documents before she became a U.S. citizen to attend to family obligations, she is now a U.S. citizen and has renounced her Chinese citizenship.

Security clearance decisions are predictive judgments about an applicant's security eligibility in light of the applicant's past conduct and present circumstances. *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988). Contacts with citizens of other countries are relevant to security determinations only if they make an individual potentially vulnerable to coercion, exploitation, or pressure through threats against those foreign relatives. Acts indicative of foreign influence warrant careful scrutiny. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude these ties are not of such a nature as to create any tangible risks of undue pressure on Applicant, so foreign influence security concerns are mitigated. Thus, I resolve SOR paragraph 1 and subparagraphs 1.a. through 1.d. in Applicant's favor.

## FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline B FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d.: For Applicant

**DECISION**

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

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Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Her counsel indicated that he had no problem with getting less than 15 days notice for the hearing. Applicant had actual notice of 15 days; but severe weather conditions led to a delay in issuing the formal notice. (TR 9)
3. Although the Government presented no evidence of the hostile nature of the relationship between the U.S. and China, the Appeal Board in ISCR Case No. 01-26893 issued on October 16, 2002, outlined a standard that when there is hostility between a foreign government and the U.S. this circumstance places "a very heavy burden on Applicant " to show that family ties there do not pose a security risk. Of course, in the case on appeal the Applicant's parents lived in the foreign country, and in this case Applicant's mother lives in the U.S. and will eventually seek U.S. citizenship. Her brother in China is institutionalized.