

DATE: December 5, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-11472

**DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Although Applicant's family members are not agents of the Peoples Republic of China (PRC), they are in a position to be exploited by a foreign power through coercive or non-coercive means that could force Applicant to choose between the loyalty to the family member and the United States (U.S.). The foreign preference concerns associated with Applicant obtaining a PRC passport in April 1999 are successfully mitigated by his decision not to use the passport after his U.S. naturalization in May 2000, and the more recent action demonstrating Applicant's willingness to renounce his PRC citizenship. Clearance is denied.

**STATEMENT OF CASE**

On May 23, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as reissued through Change 4 thereto, dated April 20, 1999, issued an 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On June 19, 2003, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on September 5, 2003. On September 16, 2003, this case was set for hearing on October 16, 2003. The Government submitted two exhibits and Applicant submitted five exhibits. Testimony was taken from Applicant and three witnesses. The transcript (Tr.) was received on October 27, 2003.

**RULINGS ON PROCEDURE**

The Government exhibits (GE) shall be identified by number. Applicant's exhibits (AE) shall be identified by letter.

th

I have taken official notice of the following documents: "China-U.S. Relations: Current Issues for the 108 Congress," updated September 15, 2003, prepared by the Congressional Research Service; "Taiwan: Recent Developments and U.S. Choices," updated September 24, 2003; and, the "Annual Report to Congress on Foreign Economic Collection and Industrial Espionage" for the year 2000.

### FINDINGS OF FACT

Applicant is a 40-year-old native of the People's Republic of China (PRC). He attended college in the PRC and graduated in 1984 with a bachelor's degree in chemical engineering. In 1989, Applicant came to the U.S. to continue his education. He received a master's of science degree in electrical engineering in 1992. In 1993, the U.S. granted him political asylum and permanent residency. In May 2000, Applicant became a naturalized U.S. citizen.

Applicant's wife, 37-years-old and born in Taiwan, met Applicant in 1992 and married him in October 1994. Applicant's wife became a permanent U.S. resident in 1996 and a naturalized citizen on November 12, 2002. (AE A)

Applicant's mother and father are over 70-years-old and have been retired for 20 years. His father worked as a clerk in a city library owned by the PRC government. His mother was employed as a manager for a seafood product company. Applicant testified his parents, who he contacts by telephone monthly, live partially on his father's savings and partially on an inheritance from his grandparents who were farmers with "some wealth." (Tr. 32)

Applicant's sister is a resident citizen of the PRC and is employed as a travel agent by a private company. According to Applicant, she has no political interests, no connection with the PRC government, and is not involved in any political activity. (Tr. 33) He contacts her by phone monthly. (GE 2)

Applicant's brother is a citizen of the PRC and is a resident of Italy. The brother owns a café in Italy. Approximately every month and a half, Applicant talks his brother about family issues only.

The inconsistent positions taken by Applicant since his sworn statement in March 2002 regarding financial support to his parents supports a finding he is annually providing his parents with financial support up to \$3,000.00. Though Applicant stated in March 2002, "[I] support my parents financially by supplying \$3,000.00 annually (actual amount based on their needs)," Applicant stated in his answer to the SOR that the \$3,000.00 was not regularly provided to supplement their income, and he had not provided financial support since 2002. Yet at the hearing, Applicant testified he had only provided the support three or four times in the last 15 years, and that he last provided support in 2001.

Applicant's parents have permanent residence status in the U.S. (Tr. 45), and are preparing to come to the U.S. They have not told Applicant what their intentions are regarding property they apparently own in the PRC. Applicant intends to talk to them about the property when he returns to the PRC in October 2003 to escort them back to the U.S.

Applicant explained he met his mother and father-in-law (citizens and residents of Taiwan) only once in 1994 at his wedding. According to Applicant, he only talks to them about superficial or non-sensitive topics once every two months. His father-in-law, 70-years-old, has been retired more than 10 years from his position in the human resources department of the Taiwan government.

According to his security clearance application (SCA) Applicant was issued a PRC passport on April 23, 1999, with an expiration date of April 22, 2004. The passport has never been used. (AE C) Upon becoming a U.S. citizen in May 2000, he renounced his PRC citizenship and called the PRC Consulate (at some time in 2000) to confirm (1) he was no longer a citizen, and (2) his PRC passport was no longer valid. He received a U.S. passport on June 21, 2000. Because there are no entries in Applicant's current PRC passport, and the passport is stamped "canceled" (although the stamp is undated) I find Applicant has not used the PRC passport since becoming an U.S. citizen. (AE C)

Neither Applicant nor his wife are involved in PRC politics. Among their close friends are a couple who are U.S. citizens and a couple who are permanent residents.

Witness 1 testified that in 2000 he recommended Applicant for employment with their current employer. Although he does not officially evaluate Applicant's work, witness 1 believes Applicant has received outstanding ratings for his work

product in the past three years.

Witness 2, Applicant's coworker for the past 2 ½ years, believes Applicant's job performance is top-notch.

The record reflects Applicant may receive some unidentified property through an inheritance. Even though the financial issue is not alleged in the SOR, a potential inheritance does not qualify as a financial interest under the foreign influence guideline.

## **POLICIES**

Enclosure 2 of the Directive sets forth disqualifying conditions (DC) and mitigating conditions (MC) which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

### **Foreign Influence**

Disqualifying Conditions (DC):

1. An immediate family member, or a person to whom the individual has close bonds 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.

Mitigating Conditions (MC):

1. A determination that the 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 U.S;
3. Contact and correspondence with foreign citizens are casual and infrequent.

### **Foreign Preference**

Disqualifying Conditions (DC):

1. The exercise of dual citizenship;
2. Possession and/or use of a foreign passport.

Mitigating Conditions (MC):

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country.
2. Indicators or possible foreign preference occurred before obtaining U.S. citizenship.

### **General Policy Factors (Whole Person Concept)**

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at pages 16 and 17 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or

absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

### **Burden of Proof**

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information 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.

The Government must establish a *prima facie* case under foreign influence (Guideline B) and foreign preference (Guideline C), which establishes doubt about a person's judgment, reliability and trustworthiness. Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that Applicant presently qualifies for a security clearance.

### **CONCLUSIONS**

Under the foreign influence guideline, a security concern may exist when an individual's immediate family, including cohabitants, and other persons with whom her or she may be bound by affection, influence, or obligation, are not citizens of the U.S., or may be subject to duress. These situations could create the potential for foreign influence that may result in the compromise of classified information. The Government has established a *prima facie* case under DC 1, and DC 3 of the foreign influence guideline. Applicant's parents, brother, sister, and parents-in-law are resident citizens of the PRC or a foreign country. In addition, Applicant's parents receive regular financial support from Applicant.

MC 1 may mitigate evidence of foreign influence when the immediate family members are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force an applicant to choose between loyalty to the family member and loyalty to the U.S. Applicant's evidence indicates that none of his family members are agents of a foreign power. Rather, they are retired or in jobs that have no connection with the PRC government. However, an applicant must also demonstrate under MC 1 his family members are not in a position to be exploited by a foreign power in a way that could force the applicant to choose between loyalty to family members and the U.S., even though there has been no evidence of an attempt at exploitation by the foreign power.

Whether an applicant's family members are in a position to be exploited is determined not only by the scope of the relationship with the family member but also the type of country involved. The PRC, a communist government with a poor human rights record, is involved in ongoing espionage against the U.S. Even though Applicant's family members are not agents of a foreign power, they are nonetheless citizens of a political system whose internal practices and national interests are often at odds with U.S. national interests. Therefore, the family members are in a position to be exploited by the PRC in a way that could force Applicant to choose between loyalty to the family member and U.S. MC 1 is inapplicable to the facts of this case.

MC 3 is also inapplicable because the contact Applicant has with his family is more than casual and infrequent. Considering all the evidence, including the positive evidence of his job performance, Applicant has failed to meet his ultimate burden of persuasion under the foreign influence guideline.

Applicant's testimony regarding his parents' inheritance from his grandparents and their pending decision regarding the retention or sale of property in the PRC (though unalleged in the SOR) raises the possibility he may inherit unknown real or personal property from his parents who reside in the PRC. However, one or more of his other family members may instead inherit the property, or he may not be in a position to inherit the property when the time for transfer occurs. Applicant may even inherit the property under circumstances that raise no security concerns under the foreign influence or foreign preference guideline. The potential for Applicant to inherit the PRC property does not indicate Applicant has a financial stake in the PRC that is cognizable under the foreign influence guideline.

Foreign preference occurs when an individual acts in such a way as to indicate preference for a foreign country over the U.S. A case under the foreign preference guideline has been established under DC 1 and DC 2 as Applicant obtained a PRC passport in April 1999.

However, under MC 2, indicators of possible foreign preference can be mitigated when they occurred before the individual obtained U.S. citizenship. Because Applicant obtained his passport before he received his U.S. citizenship, he is entitled to mitigation under MC 2. In addition, Applicant has taken sufficient steps to renounce his PRC citizenship pursuant to MC 4 of the foreign preference guideline. First, he has not used the PRC passport. Second, he took appropriate steps to have the PRC passport canceled. I find for Applicant under the foreign preference guideline.

In reaching the formal findings in this case, I have also considered the facts and circumstances of this case under the general factors of the whole person concept.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Foreign Influence, Guideline B): AGAINST THE APPLICANT.

- a. For the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.

Paragraph 2 (Foreign Preference, Guideline C): FOR THE APPLICANT.

- a. For 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.

Paul J. Mason

Administrative Judge