

DATE: July 18, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11924

**DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

**APPEARANCES**

**FOR GOVERNMENT**

Catherine Engstrom, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 46-year-old defense contractor employee who seeks a security clearance for his employment. Applicant met a female Chinese national over the internet. He married her and they moved to the United States. Applicant's wife's relatives live in the Peoples Republic of China, and have employment in government positions. Applicant assumes his wife's family are members of the Communist Party. His wife is uncertain if she will become a United States citizen. Applicant also maintains email contact with five Taiwanese nationals and visited them in 1998 and 2000. Applicant's connections with his wife's family and his friendship with foreign nationals raise strong concerns regarding foreign influence which Applicant has not mitigated. Clearance denied.

**STATEMENT OF THE CASE**

On October 24, 2002, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personnel security Guideline B (Foreign Influence) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

On October 31, 2002, Applicant responded to the SOR allegations. He requested his case be decided on the written record in lieu of a hearing. On April 3, 2003, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) <sup>(1)</sup> was provided to the Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Nothing in the record indicates that Applicant filed a response to the FORM by the May 15, 2003 due date. This case was originally assigned to Administrative Judge Michael Leonard on June 1, 2003. Judge Leonard recused himself from the case, and it was assigned to me on June 30,

2003.

## **FINDINGS OF FACT**

Applicant admitted the allegations in subparagraphs 1.a. through 1.f. of the SOR. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 46-years-old and lives with his second wife near his place of employment with a defense contractor. He was married on February 6, 2002. His wife is a Chinese citizen whom he met over the internet by posting his biography on the website "Asian Friend Finders." She responded to his posting, and he arranged to visit her in China. He met his wife face-to-face in August or September 2000, as a result of the website connection. He visited her in the People's Republic of China (China) twice in 2000 and again in July 2001. She lived in Shenzhen province, which is next to Hong Kong. He remained there for several days during each visit. Applicant does not care if his wife becomes a United States citizen. (Item 7 at 2, 4 )

Applicant's wife's family (father, mother, sister and brother) live in the People's Republic of China. Her father is a doctor, her mother is a retired accountant from a tobacco company, and her brother works as an accountant for the same tobacco company. Applicant's wife worked as a school teacher in China, but there is no evidence what employment she has in the United States. Applicant thinks his in-laws are employed in government positions and may be members of the Communist Party of China, but he has not asked them. His mother-in-law, who is retired, worked in a similar government related position. He also does not care if they or his wife are members of the Communist Party of China. (Item 7 at 4)

Applicant maintains e-mail contact with his in-laws, and also with five Taiwanese nationals he met through his work. He has used his employer's e-mail system to communicate with these people. Applicant visited the five Taiwanese nationals in 1998 and 2000. In 2001 Applicant corresponded with two friends of his wife. (Item 7 at 1 and 2, 4)

China and Taiwan are two countries on a list of seven countries which pose the highest threat of foreign economic collection and industrial espionage. (Item 8 at 15)

Applicant had a girlfriend (an exotic dancer) in 1996 to whom he gave access to his credit cards, and that girlfriend took a \$2,500 cash advance and made purchases at two stores, for a total of \$4,000. Applicant later sued her and obtained a judgment which remains unsatisfied. Applicant also spent another \$3,000 to \$4,000 on another girlfriend, who was also an exotic dancer. (Item 7 at 6 - 8)

In 2001 Applicant gave his computer password to a co-worker, who did not use it. Applicant did not change his password later. (Item 7 at 11 and 12)

## **POLICIES**

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (See Directive, Section E2.2.1., Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of

questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

### **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 not citizens of the United States or 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.

Directive, ¶ E2.A2.1.1.

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

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. Directive, ¶ E2.A2.1.2.1.

Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists. Directive, ¶ E2.A2.1.2.2.

Conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government.

Directive, ¶ E2.A2.1.2.6

Conditions that could mitigate security concerns include:

None

### **CONCLUSIONS**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Disqualifying Conditions (DC) 1, 2 and 6 apply here. Applicant's wife and her family are citizens of a foreign government. He is living with his wife in the United States while he is employed by a defense contractor on a major project. His continued association with foreign nationals who are citizens of Taiwan, while married to a citizen of China, can make Applicant vulnerable to exploitation, coercion, or duress by either of these governments, both of whom engage in economic espionage against the United States. Applicant met his wife through an internet "dating service" and does not seem concerned that her family, and possible his wife herself, are members of the Communist Party of China. He admits they all had jobs which were "technically" government jobs, and they were probably members of the Communist Party. Applicant visited his wife in China twice or maybe three times for a few days at a time prior to their marriage.

These actions do not show Applicant demonstrates proper judgment, trustworthiness, and reliability needed prior to giving someone access to classified information on a defense project. The Government is properly concerned where available information indicates that an applicant for a security clearance may be involved in conduct which demonstrates poor judgment, untrustworthiness, or unreliability on the part of Applicant. These concerns include consideration of the potential as well as the actual risk that Applicant may deliberately or inadvertently fail to properly safeguard classified information.

Applicant's lack of good judgment is further demonstrated in two other incidents. Although these matters are not charged in the SOR, they are of such substance as examples of Applicant's judgment-making ability, that I must consider them and comment upon them. First, Applicant gave his credit card information to a girlfriend who immediately took or spent \$4,000 and charged that amount on that credit card. Next, having already suffered that loss,

he gave money to another girlfriend who was also an exotic dancer. Finally, he also gave his computer password to a co-worker before leaving on a trip, and did not change his password later after he returned from his trip. Taken all together, these actions show Applicant may trust but does not verify, and displays a lack of attention to basic information security procedures.

These actions, coupled with the way Applicant met his Chinese-born wife, his cavalier attitude toward his wife's interest in becoming a United States citizen, coupled with his lack of interest in the probable Communist Party membership of his wife and her family, create serious doubts about his judgement, discretion, reliability and trustworthiness. Applicant has not overcome those doubts. I cannot find any Mitigating Condition (MC) which is applicable here, and therefore, I apply none. In *Department of the Navy v. Egan*, 484 U.S. at 531, the United States Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, doubts against an Applicant's security worthiness are to be resolved against the Applicant, as I resolve them here.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: Against Applicant

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

### **DECISION**

In light of all the circumstances and facts 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.

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Philip S. Howe

Administrative Judge

1. The Government submitted nine items in support of the SOR.