

DATE: September 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15339

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Deputy Chief Department Counsel

FOR APPLICANT

Gary Rigney, Esquire

SYNOPSIS

Born in the Peoples Republic of China ("China"), Applicant never used her foreign passport after she became a naturalized United States (U.S.) citizen in January 2001. She voluntarily complied with the Department of Defense policy requirements by returning her Chinese passport in August 2003 and mitigated foreign preference concerns. While her parents and sister are citizens of and reside in China, her mother-in-law now lives in the U.S. and has permanent residence status. None of her relatives have any ties to the government and would not place her in a position of vulnerability. Thus, Applicant has also mitigated concerns over foreign influence. Clearance is granted.

STATEMENT OF THE CASE

The Government could not reach the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant,⁽¹⁾ so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 30, 2003. The SOR detailed security concerns in paragraph 1 over foreign preference (Guideline C), and in paragraph 2 over foreign influence (Guideline B). Applicant received the SOR and replied to these SOR allegations in an Answer forwarded on May 21, 2003, by her counsel who requested a hearing. The case was assigned to Department Counsel who on June 9, 2003, attested it was Ready to Proceed, and the case was assigned to Administrative Judge John Metz. On June 30, 2003 the case was reassigned to me because of regional rotation.

Subsequently, a mutually convenient date for hearing was agreed to and a Notice of Hearing issued on July 10, 2003, set the matter for July 28, 2003, at a location near where Applicant works and lives. At the hearing the Government asked that I take Official Notice of three documents (ON I, II & III) and introduced five exhibits which were admitted into evidence (Exhibit 1-5). Applicant testified herself and called three witness; she offered four exhibits (Exhibits A-D) which were admitted into evidence. Her counsel asked that I take Official Notice of one documents (ON IV). The transcript (TR) was received on August 5, 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 Findings of Fact:

Applicant, who is 39 years old, has worked for Company #1 from February 2001 to present in State #1. In March 2001 she was asked to obtain a security clearance and completed an Office of Personnel Management (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. She was unemployed from 1996-2001. (Exhibit 1; TR 37-38)

Applicant attended college in the Peoples Republic of China ("China") for two years and worked in China for five years until 1988. In 1998 she went to Japan⁽²⁾ to study the language and stayed there until 1990. She then went to England to study English. Later she received her A.S. degree in 1999 from a community college in State #1 and her B.S. degree from a State #1 university in May 2001 in computer science. (Exhibit 1; TR 19-21, 26-28)

Applicant returned to China in 1991 to marry her husband; he was a graduate student living in the U.S. in State #1. Her husband now is employed in State #1. They have one child born in the U.S. who is a U.S. citizen, age 9. (Exhibit 1; TR 22-23, 25-26; 40-41)

Foreign Preference and Foreign Influence

Applicant was born in China, and came to the U.S. in November 1991 to join her husband in State #1. She obtained work permission in 1994-96. She became a naturalized U.S. citizen in January 2001. Applicant's husband became a naturalized U.S. citizen in September 1999. She has several family members who are citizens of China and remain there: her parents are retired elementary school teachers, and one sister. Her parents visited her in the U.S. in 2000. Her mother-in-law⁽³⁾ has a permanent resident visa and lives with Applicant and her family in State #1. None of her relatives in China are financially dependent on Applicant; however, she sends her parents \$1,200 every year and contacts them weekly by telephone. She has applied for her parents and her sister to become permanent residents of the U.S. Applicant speaks to her sister once a month. Her sister is married and is a clerk for a shipping company. None of her family are involved in any governmental or political activities. (Answer; Exhibits 1, 2, 5; Exhibit A, C; TR 23-24, 29; 34-35; 39-42; 43-46; 47-48) She has no financial interests in China. (TR 46)

Before she became a U.S. citizen, Applicant visited her family in China in 1996 and in 2000 on her Chinese passport. (Exhibit 1; TR 28, 30-31) After she became a U.S. citizen, she traveled to China in May 2002 to visit her family, but used her U.S. passport with a visa for China. When she became a U.S. citizen, she relinquished and renounced her Chinese⁽⁴⁾ citizenship. In August 2003 she returned her Chinese passport⁽⁵⁾ (which she had previously kept only as a souvenir) to the Chinese Embassy. (Exhibits 2, 3, 4; Exhibit B; TR 29-32; 42)

Applicant has never been subjected to any kind of coercion or duress by anyone in China to do anything contrary to the interests of the U.S. Even though she is not a cleared employee at her company she advised the security manager of her trip to China in 2002 and was debriefed voluntarily upon her return. (TR 37, 47-48) She would always put the interests of the U.S. ahead of China as she is now a citizen of the U.S. (TR 41)

References

The security manager at Company #1 testified that he sees Applicant on a daily basis and knows her as she applied for a security clearance. The company has a formal program to train individuals about travel abroad and what procedures to use. As a policy of the company, Applicant attends security briefings even though she is uncleared. In judgment of this security manager, Applicant would not undertake any activity that would be disloyal to the U.S. (TR 50-51)

A co-worker who has known Applicant for a year testified that she has never observed any behavior on Applicant's part that would indicate she would have a preference for China over the U.S. She has a good association with the other colleagues. (TR 55-57)

Applicant's program manager testified that he has never seen an indication that she would be disloyal to the U.S. He assessed Applicant as a "quick learner" who contributes to the project. (TR 58-61)

Applicant's husband testified that they were friends in China in middle school. They married in October 1991. Since then they have both lived in State #1. He is a scientist and became a naturalized citizen in September 1999. None of his family in China have any ties to the government. If he or his wife were under duress, he would immediately report the matter to U.S. federal officials. (Exhibit D; TR 62-71)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility 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. 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 the following relevant Adjudication Guidelines:

Guideline C - Foreign Preference ⁽⁶⁾

The Concern: When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

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

- (1) The exercise of dual citizenship;
- (2) Possession and/or use of a foreign passport ⁽⁷⁾;

Conditions that could mitigate security concerns include:

- (1) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;
- (4) Individual has expressed a willingness to renounce dual citizenship.

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

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;

(4) The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required;

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 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 only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Guideline C - Foreign Preference

Applicant mitigated security concerns over her possible preference for a foreign country over the United States. Though at the time she applied for a security clearance, she was a naturalized U.S. citizen, Applicant did hold a Chinese passport which raised security concerns under disqualifying condition (DC) (1) the exercise of dual citizenship and (2) possession and/or use of a foreign passport. DoD policy clarification of August 16, 2000 required any "possession and/or use of a foreign passport" may be a disqualifying⁽⁸⁾ condition. To mitigate an Applicant must surrender the foreign passport or obtain official approval for its use. 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). Acts indicative of foreign preference warrant careful scrutiny.

While Applicant possessed a foreign passport, after she became a naturalized citizen in January 2001, she applied for a U.S. passport and has used it exclusively for her travels. By Chinese law she lost her citizenship in her birth country automatically when she became a U.S. citizen. Applicant meets the mitigation guidelines as under MC (1), her dual citizenship was based solely on parents' citizenship or birth in a foreign country. To her credit, Applicant voluntarily complied with DoD guidance soon after she became aware of the proper way for individuals to take corrective avenue to mitigate this security concern by surrendering her foreign passport which she had kept merely as a souvenir. She affirms that her principal preference is for the U.S. She falls within MC 4 as she fully complied with DoD policy guidance on foreign passports.

After reviewing all of the evidence in the record and considering all of the security policies, including the August 16, 2000, policy clarification memorandum, I conclude she has mitigated the concerns and has indicated her clear preference for the United States. Hence, I decide SOR paragraph 1 and subparagraphs 1.a. and 1.b. for Applicant.

Guideline B - Foreign Influence

Applicant also mitigated possible foreign influence raised by her close ties of affection to citizens of a foreign country. Where her husband is a U.S. citizen, her parents and her sister are citizens of China and reside there. Also a citizen of China, her mother-in-law now resides in the U.S. as a permanent resident. 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 (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.

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). Acts indicative of foreign influence warrant careful scrutiny. There is a special concern over China as the country has interests inimical to those of the US and is a totalitarian state that depends on the suppression of its people. Further, China has been involved in espionage against the U.S., both military and economic. (ON I, II, III)

These security concerns are mitigated by the fact that Applicant's relatives have no ties to the foreign government; nor is there any substantial likelihood that they would exercise foreign influence over Applicant. Merely because of these family ties Applicant is not vulnerable to duress. Further on MC 3, her contact and correspondence with foreign citizens are casual and infrequent; and under MC 4, she affirms she would promptly report to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required by her company and as attested to by the company security official. Given her history of responsible conduct in the U.S., I think it improbable that any of her family members would create a situation that could result in the compromise of classified information. 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. Given Applicant's clear commitment to report any attempt to influence her, any risk of foreign duress or influence on Applicant and her immediate family would appear to be slight and clearly manageable. She is highly regarded by the program manager and a co-worker at her company who never observed any behavior on Applicant's part that would indicate she would have a preference for China over the U.S.

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, so do not invoke such foreign influence concerns. Thus, I resolve SOR paragraph 2 and subparagraphs 2.a. through 2.c. 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 C: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: 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.

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. Applicant participated in a demonstration in front of the Chinese Embassy while she was in Japan in 1989 after the rebellion at Tienman Square. (TR 21)
3. Her father-in-law died in October 1996. (Answer; Exhibit 1)
4. China does not recognize dual citizens, so anyone who acquires foreign nationality shall lose Chinese nationality automatically. (TR 32-34;ON IV)
5. After she became a U.S. citizen, she only kept her Chinese passport as "a souvenir." (Exhibit 2)
6. See also the DoD August 16, 2000, **Clarification of Department of Defense Policy on Foreign Preference** which clarified the policy on Foreign Preference, Guideline C and stated, in part:

The purpose of this memorandum is to clarify the application of Guideline C to cases involving an applicant's possession or use of a foreign passport. The Guideline specifically provides that "possession and/or use of a foreign passport" may be a disqualifying condition. It contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country. The only applicable mitigation factor addresses the official approval of the United States Government for the possession or use. The security concerns underlying this guideline are that possession and use of a foreign passport in preference to a U.S. passport raises doubt as to whether the person's allegiance to the United States is paramount and it could also facilitate foreign travel unverifiable by the United States. Therefore, consistent application of the guideline requires that any clearance be denied or revoked unless the applicant surrenders the foreign passport or obtains official approval for its use from the appropriate agency of the United State Government. Modification of the Guideline is not required.
7. DoD policy clarification of Guideline C issued in August 2000 made clear that "any clearance [must] be denied or revoked unless the applicant surrenders the foreign passport"
8. The policy contains no mitigating factor related to the applicant's personal convenience, safety, requirements of foreign law, or the identity of the foreign country.