

DATE: November 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15622

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Considering all the facts and circumstances, Applicant's family ties to China do not pose an unacceptable security concern or risk under the foreign influence guideline. Clearance is granted.

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 arch 13, 2003, Applicant responded to the SOR and requested a hearing before an Administrative Judge.

The case was assigned to me on August 28, 2003. On September 17, 2003, this case was set for hearing on October 15, 2003. The Government submitted one exhibit and Applicant submitted six exhibits. Testimony was taken from Applicant and four witnesses. The transcript (Tr.) was received on October 23, 2003.

RULINGS ON PROCEDURE

The government exhibits shall be marked as "GE" followed by the number of the exhibit. Applicant's exhibits shall be marked as "AE" followed by the letter of the exhibit.

I have taken official notice of the "Consular Information Sheet" for China, dated May 29, 2003. I have also taken official notice of the "Annual Report to Congress on Foreign Economic Collection and Industrial Espionage" for the year 2000.

FINDINGS OF FACT

The SOR alleges foreign influence (Guideline B). Applicant admitted factual allegations in subparagraphs 1.a. and 1.b., but denied 1.c., explaining that her other half-brother is a citizen and resident of Canada. Her security clearance application (SCA), dated August 7, 2001, reflects her half-brother is a resident citizen of Canada. With regard to 1.d., Applicant denied she provides financial assistance to her family in China. Because of evolving economic reform in China, her family members are retired with pensions. Applicant's admissions shall be incorporated in the following factual findings.

Applicant is 42 years old. She was born on January 5, 1961, into a Chinese family consisting of her father and mother, two brothers, two half-brothers, and three sisters. Applicant's father, 83 years old, is a resident citizen of China, currently living with Applicant's oldest brother. Before her father retired in 1979, he was a mechanical engineer in a watch factory. (Tr. 99). Applicant's mother is 72 years old. Though the record does not disclose how she was employed in China, neither she nor Applicant's father have ever been members of the Communist Party or agents of the Chinese government. Applicant's mother also retired in 1979; she was naturalized in the U.S. in 1999, and currently lives with Applicant.

Applicant's two older brothers, one half-brother, and three older sisters are resident citizens of China. None of her siblings were ever employed by the Chinese government. Her oldest brother, 55 years old, is a retired chemical engineer who produced fertilizer and pesticides for a private agricultural business. (Tr. 99) Her second oldest brother, 44 years old, was a mechanical engineer who worked in a paper mill before he retired. (Tr. 102) Applicant's first half-brother, 52 years old, is retired, and presently works as a security guard for a province building. (Tr. 85; 100) Applicant's second half-brother, a 50-year-old Canadian citizen, is also a mechanical engineer, and imports medical supplies. (Tr. 101)

Applicant's three sisters were mechanical engineers but are retired. The oldest (54 years old) worked in a watch factory. (Tr. 85; 101) The second oldest (52 years old) was employed in textiles. (Tr. 85; 101) The third sister (47 years old) was employed in paper mill. (Tr. 102)

Applicant enrolled in a local Chinese university to pursue a degree in computer science. She compiled very good grades, particularly in English language courses. (Tr. 86) With China deciding in 1976 to open up to the outside world on several cultural levels, more young Chinese became increasingly interested in studying in the U.S. (Tr. 87-89) Before receiving her degree in computer science in 1985, Applicant decided to apply to a local U.S. university in 1984 to pursue a graduate degree in computer science. (Tr. 88) She received a full scholarship and began her graduate curriculum in January 1986. (Tr. 85) She received a Masters in Computer Science in May 1988 (Tr. 89; GE 1), the same year her mother immigrated to the U.S.

After her graduation, Applicant began working for her first software employer. In 1991, Applicant's father immigrated to the U.S. but returned to China after having a debilitating stroke. He has remained in China where his health has deteriorated dramatically. (Tr. 92)

In the last 18 years, Applicant's first visit back to China was in 1991 to bring her father to the U.S. After he suffered a stroke, she escorted him back to China at the end of 1992. While working for a previous employer from 1996 to 1999 (where international travel was a job requirement), she took short trips to China in 1996, 1998, and 1999, every time her business travel required trips to Japan. Those short trips allowed her to assess the status of her father's health. (Tr. 94-96) Applicant also returned to China in 2000 and 2002 to check on her father. In 2002, Applicant stayed with her ill father for about 3 ½ weeks, the period of time she usually stays when she is in China. (Tr. 98)

Applicant keeps up with her ill father through her mother, who calls Applicant's siblings by phone approximately once a month. (Tr. 93) There are no electronic mail (e-mail) exchanges because her siblings in China do not have addresses. Applicant does not write letters to her siblings. Applicant sends her father gifts occasionally but she does not provide financial support for him. Along with other family members, Applicant contributed money for her father's care in the late 1990s when he became paralyzed, and a nurse had to be hired to care for him. (Tr. 94)

Applicant owns no foreign assets or foreign bank accounts, and she has never worked abroad. (Tr. 105) While Applicant's father owns a two room apartment in China, she does not expect to inherit any property her father. (Tr. 98;

129) Applicant has never had contact with the Chinese embassy or foreign officers. (Tr. 105) She has only a U.S. passport. Applicant only votes in U.S. elections. (Tr. 107)

Applicant understands the potential concerns based on his family ties or connections in China. She is willing to resist any potential foreign influence. In sum, Applicant credibly testified she would definitely report any effort to pressure her. (Tr. 108; 118)

Applicant became a U.S. citizen in May 1997. (GE 1; Tr. 91) In September 1997, she petitioned for her two brothers, three sisters, and half-brother to immigrate to to the U.S. In October 1999, Applicant's mother (who became a U.S. citizen in September 1999) submitted petition papers for Applicant's siblings a second time in order to upgrade their immigration status to first and third priorities. (AE F)

Witness 1 has known Applicant for 18 years and has become a close friend. Occasionally, Applicant has provided babysitting services for Witness 1's children. Witness 1 believes Applicant has personal integrity and is family-oriented.

Applicant's former supervisor hired her in 1999 as a consultant, and found her job performance to be excellent. The former supervisor opined that although she is loyal to her sick father, she would immediately report any efforts from family members to pressure her. (Tr. 48; 50)

Another former supervisor who hired Applicant in approximately 1989 supervised her for four years. In that period, the supervisor considered Applicant's work to be at a high level, particularly in technical content. Even though Applicant began employment at another job in 1993, the former supervisor and Applicant have maintained regular social contact.

The software lead engineer has supervised Applicant for the past 1 ½ years and has found her to be a good performer on the job. The lead engineer could recall no security infractions committed by Applicant, and has never seen Applicant hesitant to ask questions about her assignments.

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;
2. Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists;
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;

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), 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 the past adverse conduct is unlikely to repeat itself and 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 could result in the compromise of classified information. The Government has established a *prima facie* case under DC 1 of the foreign influence guideline because Applicant's father, two brothers, three sisters, one half-brother, are resident citizens of China, and her other half-brother is a resident citizen of Canada.

Considering all the evidence, I conclude that MC 1 applies. The foreign influence concerns are mitigated as none of the immediate family members are agents or officers of any foreign government. Except for Applicant's sick father and first half-brother, none of the other family members are in a position to be exploited by a foreign power in a way that could force the Applicant to choose between loyalty to the family member involved and the U.S. (MC 1) Even though Applicant's father is in a position to be exploited by a foreign power, the potential is remote and Applicant has credibly demonstrated she will report any effort to coerce or pressure her.

Even though I have determined the first half-brother is not an agent or official of a foreign government, the undetailed testimony about his current security guard position could put him in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the half-brother and the U.S. As with her father, the exploitation potential is negligible and Applicant has demonstrated the willingness to report any potential foreign influence.

Applicant's mother, 72 years old, has been retired for 24 years. Even though the potential for adverse influence exists because her mother has lived with Applicant (DC 2) since at least August 2001 (when Applicant submitted her SCA), the potential is rendered negligible by the persuasive testimony from Applicant and her supervisors, both past and present, opining that Applicant would report any attempts at exploitation. (MC 1)

Applicant's oldest brother is a retired chemical engineer, having worked in fertilizer. Her second youngest brother and

youngest sister are retired mechanical engineers, having worked at the same paper mill. Her second oldest sister worked in a watch factory while her remaining sister was a mechanical engineer in a textile factory. Her remaining half-brother is a mechanical engineer engaged in the business of importing medical supplies in Canada. In sum, except for her father and first half-brother, the other family members are not in a position to be exploited by a foreign power in a way to force Applicant to choose between loyalty to the family member and the U.S.

Applicant has no foreign property or any other kind of financial assets in China or any foreign country. Applicant has traveled to China on several occasions since 1992 to primarily visit her ill father. Even though she occasionally gives her father gifts, the only time she provided financial assistance for him was when other family members also contributed in the late 1990s, after he became paralyzed.

Applicant's connections to the U.S. are firm. Applicant has lived in the U.S. since 1985, approximately 18 years, and at the same address since 1991. Applicant received a Master's Degree in Computer Science at a U.S. university in 1988. She votes in U.S. elections. Applicant's present and former supervisors have provided a consistently favorable account of her commendable work ethic as well as their belief she would immediately report any attempt to exploit her. Having weighed and balanced the entire record with the specific conditions of the foreign influence guideline and the variables of the whole person concept, subparagraphs 1.a. through 1.d. are resolved in her favor. I find Applicant will resist and report any foreign pressure or influence by either coercive or non-coercive means.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (foreign influence, Guideline B): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the 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 Applicant.

Paul J. Mason

Administrative Judge