

DATE: December 30, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-15849

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn D. MacKinnon, Esquire, Department Counsel

**FOR APPLICANT**

Fulton S. Hamilton, 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 December 1999. She voluntarily complied with the Department of Defense policy requirements by returning her Chinese passport in August 2003 to be cancelled to mitigate foreign preference concerns. None of her relatives have any ties to the government of China and would not place her in a position of vulnerability. Applicant would report any attempts to pressure her as her preference is for the U.S., not China. 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,<sup>(1)</sup> so the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on May 1, 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 22, 2003. 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. Applicant retain counsel who entered his appearance on July 7, 2003 and on July 18, 2003, requested a continuance which was granted on July 21, 2003. The hearing was re-scheduled on August 1, 2003, for September 4, 2003. At the hearing the Government asked that I take Official Notice of four documents (ON I, II, III & IV) and offered two exhibits which were admitted into evidence (Exhibit 1-2). Applicant's counsel offered three documents (Exhibits A, B, & C) which were admitted into evidence and called Applicant and seven witnesses to testify. The transcript (TR) was received on September 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 Findings of Fact:

Applicant, who is 48 years old, has worked for Company #1 from December 1999 to present in State #1. In July 2000 she completed an Office of Personnel anagement (OPM) Security Clearance Application (Standard Form 86) (SF 86) to seek a security clearance. (Exhibit 1)

Applicant attended college in State #2 and got her M.S. degree in December 1992. (Exhibit 1) Applicant married her husband in China in 1982 and they have one child born in China in 1983; she came to the U.S. in 1989. Their child is a student at a university in State #3; she became a U.S. citizen after one of her parents received their U.S. citizenship. (Exhibit 1; TR 30-32)

### **Foreign Preference and Foreign Influence**

Applicant was born in China, and came to the U.S. in 1988 to join her husband in State #2 where he was a visiting scholar. Before she became a U.S. citizen, she used her Chinese passport twice, once in 1994 to attend her mother's funeral and again in 1995 after her husband completed his degree. She became a naturalized U.S. citizen in December 1999 and by the policy of the Chinese government automatically gave up her Chinese citizenship. However, before she became a U.S. citizen, she had renewed her Chinese passport in September 1999 for five years. She retained her Chinese passport as a keepsake, but never used it again. After she got the SOR and realized that retaining her Chinese passport (with a September 2004 expiration date) raised security concerns, she returned it to the consulate in June 2003. They sent it back marked "cancelled." After she became a U.S. citizen, Applicant immediately applied for and obtained a U.S. passport in July 2000 which she has used exclusively. For example, in 2001 she went to China on her U.S. passport. Her husband also became a naturalized U.S. citizen in February 2002; he applied as the same time as she did but was delayed after the immigration service lost his file. As all of her immediate family are U.S. citizens, her loyalty is solely to the U.S. (Exhibit 1; Exhibits A, B, C; TR 32-42; 64-68; 75-76; 104-105)

The Defense Security Service (DSS) agent who did Applicant's investigation in 2001 testified that she uncovered no adverse information or witnesses on Applicant. At the time the DSS agent did the investigation, she was unaware of the August 16, 2000, DoD policy on passports (DoD Clarification of Department of Defense Policy on Foreign Preference which elucidated the policy on Foreign Preference, i.e. the "Money memo"). The DSS agent explained that Applicant disclosed that she had a passport from China, but explained that it was no longer valid. The agent was not familiar with the new DoD policy, so did not advise Applicant to return her passport. Applicant later contacted the DSS agent to advise her when her daughter and husband became U.S. citizens, and she submitted this information in a supplemental report. The DSS agent did not know about the Money Memo until after the Applicant got her SOR, and she inquired of her supervisor about this policy guidance. As soon of Applicant learned of the DoD policy, she returned her passport to the Chinese consulate to be cancelled. (TR 113-119)

Applicant owns no property in China; none of her family have any connection to the Chinese government. (TR 57)

Applicant has some unhappy memories of her family's treatment by the Chinese Government. She and her three siblings who were not treated fairly in school in China because of political concerns after the 1966 Cultural Revolution where her grandfather's property was taken away and her father who was a professor had his salary reduced. Their homes were searched and property was removed. Applicant explained that her family was not considered qualified for the military or allowed to take any good position in the Chinese government. In 1970 when she was 15 she was sent to the country to work on a farm. (TR 45-50) Because of the family's past difficulties with the Government of China, Applicant thinks it unlikely that the government would trust her family and put pressure on her. (TR 64) Should anyone pressure her for information, she would report it immediately to the FBI. (TR 66)

Applicant's sister now lives in the U.S. and is a permanent resident who has to wait five years to become a U.S. citizen; she is married and has one son. She is an engineer for a U.S. company. (TR 50-51; 68-70)

Applicant's elder brother lives in Shanghai, China, and is a professor at the university; he is married and has one child.

Applicant calls them once every two months. (TR 51-54, 58-59; 70-71)

Applicant's other brother lives in Wuhan, China and is at the university; he is married and has one child. Applicant calls them once every two months. He wanted to come to the U.S., but could not get a visa to stay as he could not find a U.S. university to sponsor him. (TR 54-58, 62-63; 70-72)

Applicant's husband testified that he is a naturalized U.S. citizen and now works for the Department of Defense in State #1 as a physicist and has a interim security clearance. He has no property in China and will inherit none. He traveled to China in 2002 to visit his father. (Exhibit C; TR 104-111)

Applicant's husband has family that lives in Shanghai, China. His father who is 78 has Parkinson's disease and is retired. Applicant's father-in-law lives with his son, who is 47 and is in business. Applicant's husband explained that his brother works for a German company. Applicant does not talk to her husband's family on the telephone and last saw them when they went to visit in 2001. (TR 59-61; 106-108)

### **References**

The President of Company #1 testified on Applicant's behalf. He works directly with her on projects and has known her for five years. He assesses Applicant as a "strong and forceful person" who stands up for what she believes is correct and thinks for herself. She is respectful of the U.S. and remembers how her family was persecuted in China, so she is grateful to be in the U.S. She demonstrates loyalty and integrity. (TR 77-82)

A former co-worker who also knows her personally testified on her behalf. She has frequently discussed with him her preference for the U.S. over China. He understands that she speaks to her family in China occasionally and visited once since he met her. (TR 84-89)

A personal friend with experience with the defense industry testified on her behalf. He has only known her through their church, but sees her on a weekly basis. He observes her love for the U.S. and her appreciations for U.S. freedoms. (TR 91-95)

A personal friend, who met Applicant in State #2 fourteen years ago when she was in school testified on her behalf. He is a psychologist who knows her personally and assesses her as a person of integrity who is very committed to the U.S. and could not be coerced. (TR 96-102)

A personal friend from Applicant's church who is a former FBI agent testified on her behalf. He has known her for four years and considers her and her husband exceptional people who are tremendously loyal to the U.S. This former FBI agent has worked on Chinese issues and does not believe that she would be susceptible to pressures from that government. (TR 120-127)

### **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<sup>(2)</sup>**

**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<sup>(3)</sup>;

**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;

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. At the time she applied for a security clearance, Applicant was a naturalized U.S. citizen, but still held 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 mandated any "possession and/or use of a foreign passport" may be a disqualifying<sup>(4)</sup> condition. To mitigate an Applicant must surrender the foreign passport or obtain official approval for its use. Acts indicative of foreign preference warrant careful scrutiny.

While Applicant possessed a foreign passport she only used it before she became a naturalized citizen. In July 2000 she applied for a U.S. passport and has used it exclusively for her travels since she became a U.S. citizen. By Chinese law she lost her citizenship in her birth country automatically when she became a U.S. citizen. She only held her Chinese passport as a keepsake, but once she learned of the security significance of retaining a foreign passport, she returned the passport to her consulate who marked it cancelled. 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 cancelling her foreign passport which she had kept merely as a memento. I note that even the DSS agent who investigated her in 2001 was unaware of the new DoD policy. Applicant 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. 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. 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 as Applicant may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. 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, IV)

However, Applicant's husband is now a U.S. citizen with an interim security clearance. Her sister is a permanent resident of the U.S. and resides in the U.S. While her brothers and husband's family are citizens of China and reside there, they have no ties to the government of China and she has limited contact with them. Thus, 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. 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. Applicant is not vulnerable to duress merely because of these family ties.

Six professional and personal references attested to her good character as well as her loyalty and preference for the U.S. over China. She is highly regarded at work by her 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. She is equally highly regarded by her personal references. 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. 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.f. 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

Paragraph 2. Guideline B: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: 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. 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.

3. 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 . . . ."
4. 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.