

DATE: November 5, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-17714

**DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's wife is a citizen of the Peoples Republic of China (PRC) who lives in the United States with permanent resident alien status. Her parents are also PRC citizens who still live in that country, and who have been persecuted by the Communist regime there for their opposition to the government. Applicant's wife was denied U.S. citizenship in 1998 because of her membership in the PRC Communist party until about 1990, but has recently been allowed to re-apply after a 10-year waiting period. Applicant's acknowledgment that his wife's parents may still be at risk of unwanted attention by the PRC government, and his wife's close contact with her parents preclude mitigation of the security concerns under Guideline B (Foreign Influence). Clearance is denied.

**STATEMENT OF THE CASE**

On March 20, 2003, the Defense Office of Hearings and Appeals (SOR) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline B (Foreign Influence). The SOR further informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On April 22, 2003, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on May 30, 2003. On June 12, 2003, DOHA issued a Notice of Hearing setting this case to be heard on July 1, 2003. All parties appeared as scheduled, the government presented documentary evidence, and the Applicant testified in his own behalf. DOHA received the transcript (Tr) on July 9, 2003.

**FINDINGS OF FACT**

Applicant admitted both of the allegations in the SOR. Additionally, after a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is a 48-year-old technical analyst employed by a defense contractor. In 1991, he was working toward a masters degree in industrial education at a major American university. His thesis focused on the use of technology in education in seven countries. He found through his research that the United States is at the high end of the spectrum as the country that uses technology the most in its schools, and the PRC is at the opposite end. With that in mind, Applicant went to mainland China to request permission to conduct his masters thesis research.

Pending his request, he found work through a Chinese university as an English language teacher to support himself. It was there that he met his future wife under unusual circumstances. She was born and raised in China and was educated as an engineer. She and Applicant became friends while both were at the university. The company she was working for had decided to transfer her to a remote location, prompting her to try to break up with her boyfriend, the son of a prominent local official. The boyfriend became upset and attacked her with a knife causing moderate injuries to her hands and arms. Because of the nature of the incident that resulted in her injuries, the girl was unable to get proper medical attention. Applicant found himself in a position to help her obtain treatment, and later allowed her to live in his apartment. This situation - a single Chinese woman living with a single male foreigner - resulted in her being socially and professionally ostracized. Applicant had previously witnessed the harmful effects this social isolation could have on women in Chinese society. Applicant proposed and the two were married in 1993, thus avoiding further problems for the girl and allowing her family to save face.

Around this time, Applicant's thesis was undermined by the advent of the internet in the global society. He also had not received permission from the Chinese government to perform his research, so he and his wife moved to the United States. Applicant and his wife both found work at a machine works company. His wife later enrolled at a nearby university and obtained a second master degree in engineering. She is currently a doctoral candidate at that university, conducting research under the supervision of a leading expert in her field, and she has plans to start an internship in a field related to the U.S. space program.

Applicant's mother- and father-in-law still reside in China. Her father is a semi-retired teacher, and her mother is a housewife who has served as an elementary school teacher at times. Applicant characterized her as having a simple peasant background. Applicant's father-in-law was selected for "re-education" by the Communist government when he was 14-years-old and when he was 30-years-old. He and his family have been lifelong opponents of the regime in China, choosing to espouse freedom of speech and thought rather than accede to Communist dogma. Applicant and his wife remain "concerned that something may occur to bring (her parents) back under the eye of the (communist) party again." [\(2\)](#)

Applicant's wife joined the Communist party at her father's suggestion so that she might avoid some of the problems he experienced as a critic of the government. Unfortunately, because she was unwilling to completely comply with party practices, and as a result of her pro-democracy activities at Tienanmen Square, she, too, was targeted for persecution by the government. Applicant's wife quit the Communist party in about 1990, but she and her family remain "blacklisted" by the Chinese government. [\(3\)](#)

Applicant returned to the United States with his wife in 1993. She applied for citizenship but was denied in 1998 because she had not been separated from her Communist party associations for at least 10 years. She intends to re-apply in the fall of 2003, and she is currently a permanent resident alien here. [\(4\)](#)

In 1996, the couple had a baby and returned to the mainland for a visit to the baby's grandparents. In 1998 or 1999, both grandparents came to the U.S. for about nine months, and Applicant's mother-in-law visited by herself for two months in 2001. Applicant and his wife also sent their child to live with her grandparents in China for about two months in early 2000, because they want the child to be aware of the Chinese culture and family heritage. Applicant traveled to China in May 2000 to bring the child home. Finally, Applicant's wife and child visited her family in China for two months in 2002 after several deaths in the family.

Applicant's wife has lived an exemplary life in the U.S. She has converted to Christianity and is active in her church, volunteering in charities and teaching Sunday school classes. She is professionally accomplished and appears to have a bright future as an engineer in this country. She has regular contact with her family each month through e-mail or by telephone. Other than her parents and siblings, she has no other contacts or interests of note in China.

## POLICIES

The Directive sets forth adjudicative guidelines<sup>(5)</sup> to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, specifically, that Applicant has close ties of affection to foreign citizens, I conclude the only relevant adjudicative guideline to be applied here is Guideline B (Foreign Influence).

## BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(6)</sup> for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.<sup>(7)</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.<sup>(8)</sup>

## CONCLUSIONS

**Guideline B (Foreign Influence).** 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.<sup>(9)</sup>

The Government has established its case under Guideline B by showing that Applicant has close ties of affection to foreign citizens and/or persons living in a foreign country. As alleged in SOR subparagraphs 1.a and 1.b, Applicant's wife and her parents are Chinese citizens, with the latter still resident in mainland China. Applicant is, of course, bound by affection to his wife, who is likewise bound to her parents in China. Applicant's wife is an accomplished engineer who intends to work in fields of great import in the space program. She and her parents have been the subjects of persecution by a foreign government due to their political views, and Applicant has testified that there is still concern in his wife's family about the possibility of future unwanted attention by that government. On these facts, Guideline B disqualifying condition (DC) 1<sup>(10)</sup> and DC 2<sup>(11)</sup> apply.

Any analysis under Guideline B must consider the nature and circumstances of the country involved. China, an authoritarian Communist regime, has an abysmal record of human rights abuses of its citizenry. Further, China is considered one of the more active countries when it comes to espionage activities in the United States. China has also been trying to transform its economy to more of a free enterprise system. A key to this effort has been to gain entry to global markets (particularly the U.S.) in exchange for increased cooperation with the west and reforms in its internal affairs. Nonetheless, China's internal practices as well as its interests as an emerging superpower are often at odds with the United States' national interests. Therefore, any contacts in China by persons with access to classified information warrant more scrutiny than contacts with countries whose interests and forms of government are more closely aligned

with ours.

The dispositive issue is whether, in light of the foregoing, Applicant's wife or her parents are vulnerable to coercion by the Chinese government for purposes of compromising U.S. national interests through the Applicant. Security determinations are often an inexact science whereby the government must make predictive, sometimes speculative judgments based on past incidents or conduct. These determinations are more difficult in cases brought under Guideline B, which generally arise from benign facts about an Applicant's personal circumstances rather than from specific acts by the Applicant or specific events indicating risk of coercion against his foreign ties of affection. Such is not the case here. The only Guideline B mitigating condition (MC) potentially applicable to these facts is MC 1. [\(12\)](#) However, Applicant's wife's was persecuted for her political views despite her membership in the Chinese Communist party, and her father's vulnerability to future pressure by the Chinese government preclude mitigation. I conclude Guideline B against the Applicant.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. In light of continuing concerns about the nature and practices of the Chinese government, and with the experiences of Applicant's wife and her family, I am convinced that Applicant's foreign connections pose a security risk. I conclude Guideline B against the Applicant.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

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

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Tr., p. 46.
3. Tr., p. 44 - 45.
4. Tr., p. 30 - 31.
5. Directive, Enclosure 2.
6. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
7. *See Egan*, 484 U.S. at 528, 531.
8. *See Egan*; Directive E2.2.2.
9. Directive, E2.A2.1.1.

10. Directive, E2.A2.1.2.1. 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;

11. 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;

12. E2.A2.1.3.1. 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;