

DATE: December 17, 2003

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-18426

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 48-year-old engineer who was born in the People's Republic of China. She has lived in the U.S. for 22 years, obtained her Ph.D., married, and made her life here. In completing her first security clearance application (SCA), in 2002, she reported her family members, who were citizens of and resident in the People's Republic of China. She corresponds periodically and has visited them in China on three occasions since 1999. She has no other ties to China, is firmly committed to the U.S. and credibly avers that she would immediately report any improper contacts involving classified information. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On May 12, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On June 20, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have a hearing before a DOHA Administrative Judge. The matter was assigned to another Administrative Judge, but was reassigned to me on July 21, 2003, because of caseload considerations. A Notice of Hearing was issued on September 4, 2003, and the hearing was conducted on September 18, 2003. At the hearing, Applicant testified, and offered two exhibits, which were marked and admitted as Applicant's Exhibits (AX) A and B. The Government did not call any witnesses, but offered three exhibit, which were marked and admitted as Government Exhibits (GX) 1-3. The transcript (Tr) was received at

DOHA on September 29, 2003.

FINDINGS OF FACT

Applicant is a 48-year-old engineer for a defense contractor. The SOR contains one allegation under Guideline C (Foreign Preference) and four allegations under Guideline B (Foreign Influence) in the Directive. In her response, Applicant admitted the facts alleged in SOR 1.a., as of the date referenced, August 30, 1999. She also admitted the facts alleged in SOR 2.a-2.d. All of her SOR admissions were accompanied by explanations and comments. The factual admissions are incorporated herein and are deemed 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:

Guideline C (Foreign Preference)

As of August 31, 1999, Applicant possessed a valid passport from the People's Republic of China (China) that did not expire until August 14, 2004. After becoming a U.S. citizen in March 2000, and receiving her U.S. passport in July 2000, she kept her Chinese passport, but only because she did not know it might cause a problem. When so informed, she had the passport cancelled by Chinese officials, who did so without asking any questions, and returned the void passport to Applicant (Tr at 44, 45), a copy of which was admitted into evidence (AX A).

Guideline B (Foreign Influence)

- 2.a. - Applicant's father is a citizen of and resident in China;
- 2.b. - Applicant's stepmother is a citizen of and resident in China;
- 2.c. - Applicant's sister is a citizen of and resident in China;
- 2.d. - Applicant's step-sibling is a citizen of and resident in China.

China is recognized by the U.S. government as having "significant intelligence operations targeting the U.S." (GX 3) and the information that is listed as of primary concern to the U.S. government interest is in the general area of Applicant's professional activities. (GX 2). Applicant understands the Government's concerns about her relatives in China. However, she has lived in the U.S. for 22 years, married and raised a family here, and identifies with this country. She views herself as first and foremost a U.S. citizen and recognizes her obligation to protect the interests of the U.S. Applicant's Project Lead at work speaks very highly of her and considers her to be a "valuable asset to our team." (AX B)

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE C (Foreign Preference)

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

1. The exercise of dual citizenship;
2. Possession of and/or use of a foreign passport;

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 foreign citizenship. [\(1\)](#)

GUIDELINE B (Foreign Influence)

Condition that could raise a security concern and may be disqualifying:

1. An immediate family member, or a person to whom the applicant has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country.

Condition that could mitigate security concerns:

1. A determination that the immediate family member(s), cohabitant, or associate(s) in question would not constitute an unacceptable security risk.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant was born in the People's Republic of China (China) in 1955. She obtained B.S. degree in Electronics from a college in China. (Tr at 27). After graduating, she worked for a year doing a population census for the Chinese government. (Tr at 28). She came to the U.S. in 1983, attended an American university for six years, and obtained a Ph.D./MS in 1989. She was married in 1989 and divorced in 1995. Her husband was a Chinese born U.S. citizen. After graduating from the American university, she worked for several companies over the years, and then and then found her present position. Advancement in her position was restricted by her lack of a security clearance,

and when she learned from the DSS agent that holding a foreign passport was an absolute bar to her obtaining a security clearance, she went to the Chinese consulate and had the passport cancelled. (Tr at 25, 26 and AX A).

Applicant became a U.S. citizen in May 2000, obtained a U.S. passport, and no longer considered herself to be a citizen

of China. (GX 1). Her father is 75 and a retired Judge from the Chinese judicial system and was on the highest court in the province. (Tr at 26, 34, and 35). She speaks with him by telephone every month or two and e-mails him infrequently. (Tr at 35). She brings him gifts when she returns to China to visit, the last times being in 1999, 2000, and 2003 (Tr at 36). She is "close" to her father. (Tr at 37). Her natural mother died in 1987 and her stepmother, who is 70, is retired from a government agency dealing with culture and art. (Tr at 38).

Applicant's sister is 50, and works as an accountant for a private company. Applicant is "close" with her sister (Tr at 42), speaks to her by separate telephone call each time she calls her father, and has visited her on her three trips to China. (Tr at 39). Her stepbrother is 48 and owns a small private company that trades with Japan. (*Id.*). Her only communication with him is a Christmas card each year. (Tr at 40). Among her friends in China are former classmates, many of whom work for the Chinese government. (Tr at 40). Contact is infrequent, the last time being their 20th reunion two years ago (Tr at 41). She has never told anyone about her work, beyond saying she works for a computer company. She never mentions the nature of her job or that she works with classified information. (*Id.*).

When asked by Department Counsel what she would do if ever asked to provide classified information, she replied: "I would refuse to give any information and also I would report it to [the] security officer in our company if I have this kind of situation."

There is no evidence that anyone in China has ever asked her to do anything improper vis-a-vis the United States, which does not prove that no one will ever ask her in the future. The absence of past efforts is only one factor that must be considered in context. China is one of the countries about whom U.S. intelligence agencies are most concerned. As Department Counsel appropriately pointed out, Applicant's father is recently retired from a significant position in China's judiciary and her stepmother is recently retired from a government agency dealing with the arts.

This is not a complicated case. All the allegations in the SOR are derived from information freely provided by Applicant in her security clearance application (SCA). Since the government has not provided a sworn statement by Applicant, the SCA was the extent of the government's evidence on which the SOR was issued. It is clear that Applicant answered the questions candidly and in some detail, apparently without being advised of how her candidness might be viewed. Nonetheless, it is basis for the initiation of the present adjudication process. My evaluation must begin with fact finding based on all of the available evidence, and then considered in the context of the pertinent Guideline B and C disqualifying and mitigating conditions.

Disqualifying and Mitigating Conditions

Foreign Influence - It is difficult to avoid the conclusion that Applicant's family in China was/is of security concern. Of greatest concern is her father who, until his retirement, was a judge in what appears to be the highest court in his home province, a position of some importance in China. There is no evidence that the position involved the national government or politics, or had any connection with the military or intelligence agencies of the government. Based on all available evidence, his position does not seem to be anywhere near as problematic as being a high-ranking officer in a foreign Army. (*See*, Appeal Board Decision and Reversal Order, ISCR Case No. 02-26826 (November 12, 2003) at page 6).

As in all Guideline B cases, the "applicant has a heavy burden of persuasion to demonstrate that she is not at risk of being vulnerable to foreign influence due to her family ties in [China]." (*Id.*).

In the present case, I have first considered her long, close, and positive ties with the U.S. I have also carefully considered the fact and nature of her relationships with family in China, their present and past positions, the absence of any past problems, and Applicant's adamant statement that she would reject any effort to persuade her to act against the interests of her chosen country. Based on the totality of the evidence, I conclude that Applicant would act exactly as she promises she would.

So, while Disqualifying Condition (DC) 1 does apply, so does Mitigating Condition (MC) 1, since I am persuaded that the level of risk is so low that the relationships do not "constitute an unacceptable security risk" that Applicant would ever act against the interests of the United States. She has demonstrated that she possesses the integrity, good judgment,

reliability, and trustworthiness required of someone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline C (Foreign Preference) For the Applicant

Subparagraph 1.a. For the Applicant

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a.. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. She has in fact renounced her citizenship and returned her passport for cancellation.