

DATE: March 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19496

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Jack H. Robbins, Esquire

SYNOPSIS

This 41-year-old scientist was born in China in 1962, came to the U.S. in 1990, and became a U.S. citizen in 1999. She was married, educated, started a family, and began a career here. Most of her immediate Chinese relatives have now emigrated to the U.S. or are preparing to do so. Her only remaining foreign relatives will be her sisters, with whom she has only a casual and infrequent relationship. Applicant made a strong statement of understanding about her security obligations. Mitigation has been established. Clearance is granted.

STATEMENT OF THE CASE

On May 28, 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 17, 2003, Applicant submitted a response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on September 27, 2003. On October 29, 2003, a Notice of Hearing was issued, setting the hearing for November 20, 2003. At the hearing, the Government did not present any witnesses but offered one exhibit, which was marked for identification as Government Exhibit (GX) 1. Applicant testified and offered 14 exhibits, which were marked as Applicant's Exhibits (AX) A - N. All exhibits were admitted without objection. The transcript (Tr) was received at DOHA on December 3, 2003.

FINDINGS OF FACT

Applicant is 41 years old. She was born in the People's Republic of China (China) in 1962, and emigrated to the United States in 1990. She became a U.S. citizen and obtained a U.S. passport in 1999. The SOR contains four allegations, 1.a. - 1.d. under Guideline B (Foreign Influence). Applicant admits SOR 1.b. and 1.d., with explanations and she admits SOR 1.a. and 1.c., also with explanations. Applicant's admissions are incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from the hearing testimony and all evidence of record, I make the following additional FINDINGS OF FACT as to each SOR allegation:

Guideline B (Foreign Influence)

1.a. - Applicant's husband *is not* a dual citizen of the U.S. and China. He was born a Chinese citizen in China in 1961, but renounced his Chinese citizenship when he became an American citizen in 1999. It is Applicant's understanding that China does not recognize dual citizenship. In her security clearance application (SF 86) (GX 1 at Item 8), she cites her husband as a U.S. citizen only.

1.b. - Applicant's parents *are* citizens of China. Her father and mother, both retired medical doctors, are 78 and 74 respectively. They came to the U.S., and obtained resident alien (Green) cards. They are back in China now and plans are being made to have them come back to the U.S. permanently (Tr at 48-50). They intend to apply for U.S. citizenship as soon as the five-year waiting period expires (Response to SOR).

1.c. - Applicant's father-in-law and mother-in-law *are not* dual citizens of the U.S. and China. They are citizens of China only. They are 69 and 68, and are retired from being an engineer and factory worker, respectively. They are now permanent resident aliens in the U.S. and intend to apply for U.S. citizenship, at which time they would become U.S. citizens only. They reside with Applicant and her husband in the U.S. (AX F, AX G, AX H, and AX I).

1.d. - Applicant's sisters *are* citizens of and reside in China. Applicant has seen them only once since she left China 13 years ago. Their contact is infrequent (Response to SOR). One sister is an accountant with a telecommunications firm and the other is a nurse. Neither of them has worked for the Chinese government and neither has ever asked Applicant to do anything improper or against U.S. security interests.

Applicant and her husband came to the U.S. to continue their educations, and both eventually obtained PhDs in 1994 and 1995, respectively. Applicant's entire professional career has been in working for a major federal agency or for a defense contractor that does most its work for DoD. Her contributions to her company have resulted in a major promotion after only two years. Applicant received an interim security clearance that has since been withdrawn because of the present matter (Tr at 22, 29-30, 35). She has extensive publications in professional journals, has received awards for outstanding achievement, and has highly positive work evaluations (AX J and AX K). Applicant and her husband have two young children who are Americans by birth here. They are growing up within American society, enjoying advantages that are only "for the privileged" in China. They became U.S. citizens in 1999 because they both understand the benefits and advantages of life in U.S. society, including raising their children in a nice home and environment. Applicant's response to any improper contact would be to "report [it] to U.S. authorities" (Response to SOR).

Applicant called two character witnesses. One was the Director of her unit. He stated that Applicant's "integrity and honesty has never been in doubt," that she is "conscientious and follows the rules," and is "outstanding in every respect" (Tr at 28). The second witness works with Applicant and says that beside being a conscientious worker, she is "very honest and open and [has] got great integrity as well" (Tr at 34). Another colleague submitted a letter of recommendation expressing similar sentiments (AX N).

Applicant's former Chinese passport became invalid and was surrendered to Chinese authorities (Tr at 45 and AX C)). Since being naturalized, she has had and uses only her U.S. passport for all travel (*Id.*). The same is true as to her husband (*Ibid.* and Tr at 47, 48, AX D, AX E).

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 B (Foreign Influence)

A security risk may exist when an individual's immediate family [members] . . . 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 . . . are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

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

1. An immediate family member . . . 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) . . . in question would not constitute an unacceptable 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

The SOR expresses concerns about possible foreign influence from Applicant's relatives in China. Applicant was born in China in 1962 and emigrated to the U.S. in 1990, becoming a citizen in 1999. She has made a home in the U.S., married, had children, purchased a home, and been active in a career that has been of great service to her adopted country. No conduct even suggesting a foreign preference is found in the evidence of record. The existence of loved ones in a foreign country is always of security significance, but the fact that the relatives are citizens of and/or resident in China is of particular security concern. China has been listed in publication of U.S. Executive Branch agencies as a country with perhaps the most active espionage effort against the U.S. I have carefully considered this fact in evaluating the evidence in this case. Under DoD/DOHA rules, an Applicant has the burden of establishing that such foreign relatives are not an unacceptable risk.

Based on the totality of the evidence, I conclude that Applicant has established that there is little risk her remaining relatives in China would be asked to pressure Applicant to disclose classified information or that they would ask her to do so. Disqualifying Condition 1 (family members in foreign countries) is applicable, but minimally. However, based on the changing status of her parents and parents-in-law, and the relatively casual and infrequent contacts with her siblings, Although no improper contact has been attempted, I conclude that if it ever occurs, Applicant will, as she promises, promptly contact her company security officer or a government official. For these reasons, I conclude that Mitigating Condition 1 (the relationship does not constitute an unacceptable risk) is both applicable and persuasive

I have carefully considered the identity of Applicant's native country and the higher risks that may occur. However, based on the totality of the record, I conclude that Applicant has shown herself to be a woman of integrity and one who takes her obligation to protect U.S. security interests seriously. Considering the evidence as a whole, I conclude that the evidence does not show that any risk exists that Applicant would act against U.S. security interests.

FORMAL FINDINGS

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

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