

DATE: August 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19911

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 43 year-old naturalized United States citizen, born in the People's Republic of China. Applicant's father, brother and in-laws reside in the People's Republic of China. The evidence establishes that Applicant has extremely limited and infrequent contacts with his family, none of whom are involved with the Chinese government. He is not vulnerable to foreign influence because of his strong attachment to the United States and because his family is not in a position to be exploited in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. By mitigating these foreign influence security concerns, Applicant demonstrated it is clearly consistent with the national interest to grant or continue his security clearance. Clearance is granted.

STATEMENT OF THE CASE

On February 4, 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, issued a Statement of Reasons (SOR) to 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on March 15, 2003. Applicant requested a clearance decision based on a hearing record.

On May 5, 2003, this case was assigned to another Administrative Judge, but on May 6, 2003, because of caseload consideration, the case was reassigned to me to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on May 7, 2003, and the hearing was held on May 20, 2003.

At the hearing, Department Counsel offered four documentary exhibits (Exhibits 1 - 4) and no witnesses were called. Applicant offered no documentary exhibit and offered his own testimony. The transcript (TR) was received on June 2, 2003.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B of the Directive because Applicant's immediate family, and other persons to whom he may be bound by affection, influence, or obligation, are not United States citizens or may be subject to duress. In his response to the SOR, Applicant admits all five allegations. These allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is a 43 year old employee of a defense contractor. He was born in the People's Republic of China in 1961, moved to the United States in 1989, and became a naturalized United States citizen in 1999. He received a Ph.D. degree in electrical engineering from a United States university in 1991. His wife is a Chinese born, United States citizen, who became naturalized in 1999. Applicant and his wife have one 16 year old daughter, who also became a naturalized United States citizen in 1999.

Applicant's father, brother, father-in-law and mother-in-law are citizens of and reside in the People's Republic of China. (Transcript at 32-33.) Applicant traveled to the People's Republic of China on four occasions between 1995 and 2002 to visit his father and brother. (Transcript at 33.) Applicant's only contact with his father is by letter approximately three or four times a year. Applicant telephones his brother two times a year and exchanges emails with him two or three times a year. While his wife has some contact with her parents he does not have any contact. (Transcript at 33, 34.)

Applicant's father has been retired for approximately eight or nine years, after working his entire adult career for a local railroad in China. (Transcript at 40.) Applicant's brother works as a professor for a university, and he has never worked for the Chinese government. Applicant's father-in-law worked as a research engineer, but has been retired for approximately 17 to 20 years.

Applicant testified that his father-in-law received his Ph.D. in the United States, and because of that fact, he was always treated as a United States spy by the Chinese government. "That is part of the reason my wife and I decided to stay here instead of in China." (Transcript at 41, 42.)

Applicant testified that one of his dreams was to serve as part of the reserve military in the United States. He contacted the Air Force Reserve in 1995, to attempt to enlist but was informed that since he was over 35 years of age he was ineligible. He also stated that he has voted in every election since he became a naturalized United States citizen. (Transcript at 44.)

When he was questioned as to what he would do if the Chinese Government threatened his family, if he did not cooperate with the government, he testified, "I would feel very painful but I would say no, never. I'm sure it is going to be a very difficult decision for me, but I would not hesitate, I would never compromise." (Transcript at 45.) He was also questioned as to what he would do if he were contacted by representatives of the People's Republic of China. "Of course I'm going to report to my security officer, and also if they contact me I would be very careful in how to deal with them not compromise any security information. If they have any requests I would turn them down and report it." (Transcript at 46-47.)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, etc.

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

FOREIGN INFLUENCE (GUIDELINE B)

E2.A2.1.1. 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 not citizens of the United States or may be subject to duress. These situations 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.

E2.A2.1.2. Conditions that could raise a security concern and may be disqualifying include:

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 in, a foreign country;

E2.A2.1.3. Conditions that could mitigate security concerns include:

E2.A2.1.3.1. A determination that the immediate family member(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;

E2.A2.1.3.3. Contact and correspondence with foreign citizens are casual and infrequent;

BURDEN OF PROOF

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONSBased on the evidence of record, the Government has established initial reason to deny Applicant a security clearance because of foreign influence. Applicant's immediate family members including his father, brother and in-laws are citizens of and reside in the People's Republic of China. The Chinese citizenship and residency of members of Applicant's immediate family create the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such ties raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. ISCR Case No. 99-0424, 2001 (App. Bd. Feb. 8, 2001).

The evidence of existence of immediate family members, who are citizens of and reside in, the People's Republic of China comes within Disqualifying Condition (DC) 1. However, based on the nature of the overall record, including: the lack of government involvement of Applicant's family members, the fact that his father and in-laws are elderly and have long been retired, his brother is not employed as a professor by a private university, Applicant's family history since coming to the United States and his extremely strong testimony about his feelings concerning the United States and

what he would do if faced with a threat from a foreign government, I have determined that his family members do not constitute an unacceptable security risk and Mitigating Conditions (MC) 1 applies. Additionally, based on his extremely limited and infrequent contacts with his father, brother and in-laws, MC 3 also applies to this case. Guideline B is found for Applicant.

Accordingly, Applicant has mitigated the security concerns, thereby demonstrating that it is clearly consistent with national security to grant him a security clearance.

FORMAL FINDINGS

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: 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 Applicant.

Martin H. Mogul

Administrative Judge