

DATE: September 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21141

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 66 year-old native born United States citizen. Applicant's fiancée is a citizen of the People's Republic of China and resided there until she recently moved with her daughter to the United States to marry Applicant. Applicant's contact with his fiancée's family members who reside in China, none of whom work for the Chinese government, is extremely limited. The evidence establishes that Applicant is not vulnerable to foreign influence because of his strong attachment to the United States, and because his fiancée's family members are 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. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated February 19, 2003, to the 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 the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on foreign influence (guideline B) concerns because of the foreign residency and citizenship of Applicant's fiancée.

Applicant, acting *pro se*, filed a notarized response dated March 10, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

On April 16, 2003, this case was assigned to another Administrative Judge, but on May 8, 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 9, 2003, and the hearing was held on May 21, 2003.

At the hearing, Department Counsel offered five documentary exhibits (Exhibits 1-5) and no witnesses were called. Applicant offered one documentary exhibit (Exhibits A) and offered his own testimony. The transcript 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, specifically his fiancée, to whom he is bound by affection, influence, or obligation, is not United States citizens and/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 66 year old employee of a defense contractor. He is a native born United States citizen. He holds a Ph.D. degree and was an associate professor and held other positions for a United States university from 1970 through 2001. He is currently divorced , and he has two grown children, ages 37 and 38.

Applicant first met the woman, who became his fiancée, on an internet dating service which featured Asian women. After corresponding on the internet with her, Applicant traveled to the People's Republic of China on one occasion for two to three weeks in July 2001, to meet this woman physically and to see if they were compatible. (Transcript at 20-25.)

Applicant's fiancée is a citizen of the People's Republic of China and resided there until May 2003, when she moved to the United States with the plan to marry Applicant. She is 46 years old, speaks extremely limited English, and she has been an elementary school teacher in the People's Republic of China for 20 years. The fiancée has a thirteen year old daughter, who is also a citizen of the People's Republic of China, and who moved to the United States with her mother. (Transcript at 23, 24.) Applicant testified that he and his fiancée were scheduled to be married on May 22, 2003.

Applicant's fiancée's parents are retired college professors. Applicant met and conversed with the mother on one occasion, but he has never met or talked to her father. His fiancée has two sisters in China, and Applicant was not aware of their employment status. The husband of one sister is a police officer for a province in China. Applicant's contact with these family members has been very limited. (Transcript at 50, 51.)

At the hearing Applicant testified that he would never do anything to hurt the interests of the United States and that he would terminate his relationship with his wife rather than be a disloyal American. (Transcript at 57.) He introduced two letters from individuals, both of whom highly recommended him as a loyal American. (Exhibit A.)

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. A condition 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. A condition 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.

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."

CONCLUSIONS

Based on the evidence of record, the Government has established reason to deny Applicant a security clearance because of foreign influence. Applicant's immediate family member, his fiancée, is a citizen of and has resided in the People's Republic of China. The Chinese citizenship and former residency creates 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).

As Applicant's fiancée is a citizen of and has resided until recently in the People's Republic of China, a country which is undisputedly hostile to the Government of the United States, Applicant has a very heavy burden of showing that she does not pose a security risk. ISCR Case No. 01-26893 (October 16, 2002.) However, I conclude that Applicant has mitigated the security concerns, thereby demonstrating that it is clearly consistent with national security to grant him the clearance. This decision is based on several factors. These include the fact that Applicant is a native born United States citizen, who has lived his entire life in the United States, and his only trip to China was in 2001, to meet the woman who would become his fiancée. The family members, who are of a concern, are related to Applicant's fiancée and not to Applicant, and his contact with her family members has been casual and extremely infrequent. Finally, Applicant's fiancée and her daughter now reside in the United States. Accordingly, Foreign Influence Mitigating Condition 1 does apply to this case, and Guideline B is found for Applicant.

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