

DATE: April 12, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-22557

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant's parents, one of her sisters, and one of her brothers-in-law either work for or worked for ministries of the People's Republic of China (PRC). Her other sister is also a member of the communist party of the PRC. These connections with a foreign government, through her relatives, are not mitigated. Clearance is denied.

### **STATEMENT OF THE CASE**

On October 15, 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 the Applicant, which detailed the 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 and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on November 24, 2003.

The case was received by the undersigned on January 8, 2004. A notice of hearing was issued on January 13, 2004, and the case was heard on February 4, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript was received on February 19, 2004. The issues raised here are whether the Applicant's foreign influence militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations, except for subparagraph 1.f., as she denies that she regularly e-mails former classmates in the PRC.]

### **FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 37, and is employed by a defense contractor which seeks a security clearance on behalf of the Applicant. 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 B - Foreign Influence

1.a.~1.h. In 1988, after obtaining her undergraduate degree from the PRC, the Applicant came to the United States in order to further her education (Transcript (TR) at page 29 line 19 to page 30 line 7). She received her Master's Degree from a university in the U.S. (*id*). The Applicant also became a U.S. citizen in 1998 (TR at page 34 lines 4~6). She has traveled to the PRC to visit her family in 1998, in 2000, and again in 2002 (TR at page 28 line 15 to page 29 line 3, and at page 34 line 13 to page 35 line 10). The Applicant corresponds with or telephones her family the PRC on about a monthly basis (TR at page 27 at 12 to page 28 line 13, and at page 37 at 13 to page 38 line 2). She has very little e-mail contact with her family, and none with her former classmates in the PRC (*id*).

The Applicant's parents are citizens of and reside in the PRC (Government Exhibit (GX) 1 at page 3). Both parents worked "as engineers for the Ministry of Railways" (TR at page 17 lines 10~17). Her 80 year old father and 76 year old mother have both been retired for more than 20 years from this government ministry (*id*, and TR at page 31 line 10 to page 32 line 24). Her parents visited

the U.S. in 1998 and 2000, and are currently visiting the U.S. (TR at page 29 at lines 4~10, and at page 36 lines 2~20).

The Applicant has two sisters, who are citizens of and reside in the PRC (GX 1 at page 3). Her oldest sister, who is 46, works for the Ministry of Railways (TR at page 22 line 24 to page 25 line 14, and at page 32 line 25 to page 33 line 19). Her next older sister, who is 44, works for "a cooling-system company," but is a member of the communist party of the PRC (*id*, and TR at page 40 line 14 to page 41 line 5). Her sisters are also married to citizens of the PRC (GX 2 at page 2). One brother-in-law "works for a construction company," while the other works for a subdivision of the Ministry of Agriculture (TR at page 25 line 22 to page 27 line 7, and at page 33 line 20 to page 34 line 3).

### Mitigation

The Applicant's manager thinks highly of the Applicant, and avers that she is trustworthy (Applicant's Exhibit A).

## **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out a case under Guideline B (foreign influence), which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's

adverse conduct and her ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct or situation, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who is subject to a foreign influence, may be prone to provide information or make decisions that are harmful to the interests of the United States. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

### **CONCLUSIONS**

The Applicant's parents, sisters and brothers-in-law are "citizen[s] of . . . [and] present in, a foreign country," the PRC. The first disqualifying condition is therefore applicable. Furthermore, as the Applicant's parents, though retired, one sister, and one brother-in-law either work for or worked for PRC ministries, these "[r]elatives . . . are connected with . . . a foreign government;" and as such, the third disqualifying condition is also applicable. Even more problematic is the party affiliation of one of her sisters, who is a member of the communist party of the PRC. The Government has demonstrated through its last Exhibit, that the PRC is not only a threat to American interests, but that the communist party also governs the PRC (GX 3). There are no mitigating conditions applicable under Foreign Influence; and as such, Guideline B is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding her foreign influence. The Applicant has thus not met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, she has not met her ultimate burden of persuasion under Guideline B.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

#### Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

## Administrative Judge