KEYWORD: Foreign Influence
DIGEST: Applicant has failed to meet her burden of demonstrating that her parents and parents-in-law, who are citizens and residents of China, are not in a position to be exploited by a foreign power. She and her husband maintain weekly contact with both her parents and parents-in-law. Both Applicant's parents and parents-in-law receive pensions from the Chinese government. They have visited Applicant and her husband on more than one occasion pursuant to visas authorized by the Chinese government. Applicant and her husband have also traveled to China to visit them. Clearance is denied.
CASENO: 02-23885.h1
DATE: 08/12/2004
DATE: August 12, 2004
In Re:
SSN:
Applicant for Security Clearance
ISCR Case No. 02-23885
DECISION OF ADMINISTRATIVE JUDGE
ROGER E. WILLMETH
APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Department Counsel

#### FOR APPLICANT

Pro Se

#### **SYNOPSIS**

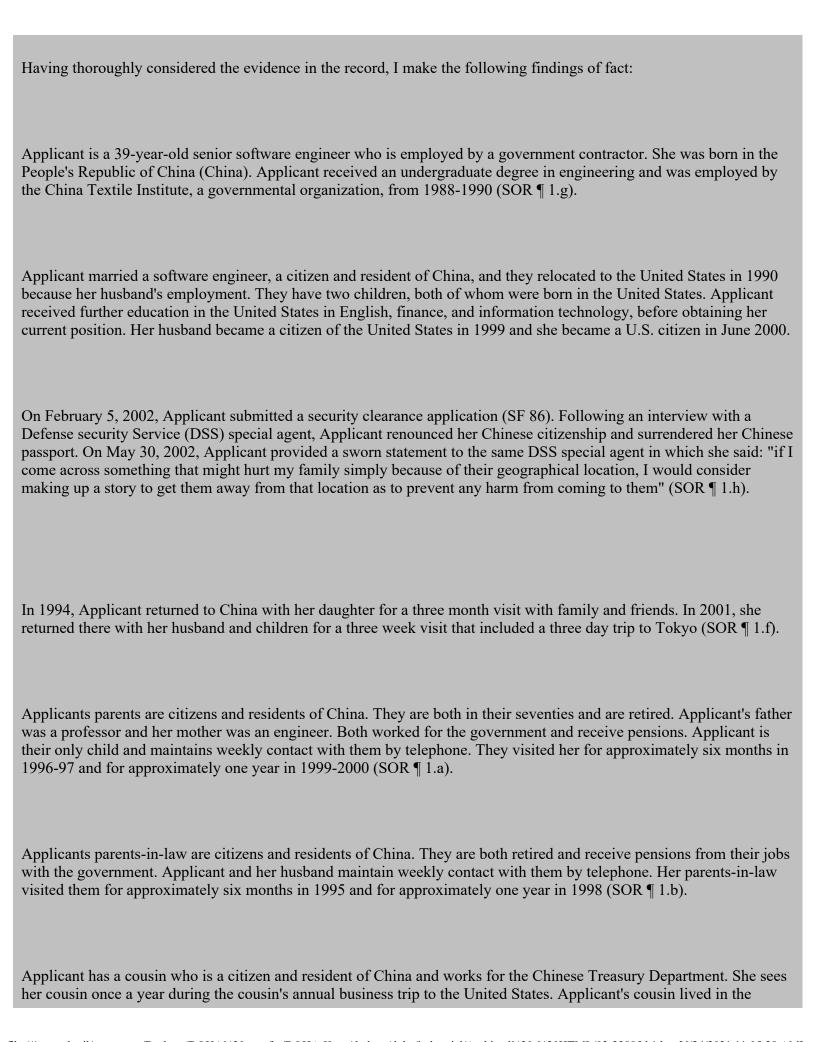
Applicant has failed to meet her burden of demonstrating that her parents and parents-in-law, who are citizens and residents of China, are not in a position to be exploited by a foreign power. She and her husband maintain weekly contact with both her parents and parents-in-law. Both Applicant's parents and parents-in-law receive pensions from the Chinese government. They have visited Applicant and her husband on more than one occasion pursuant to visas authorized by the Chinese government. Applicant and her husband have also traveled to China to visit them. Clearance is denied.

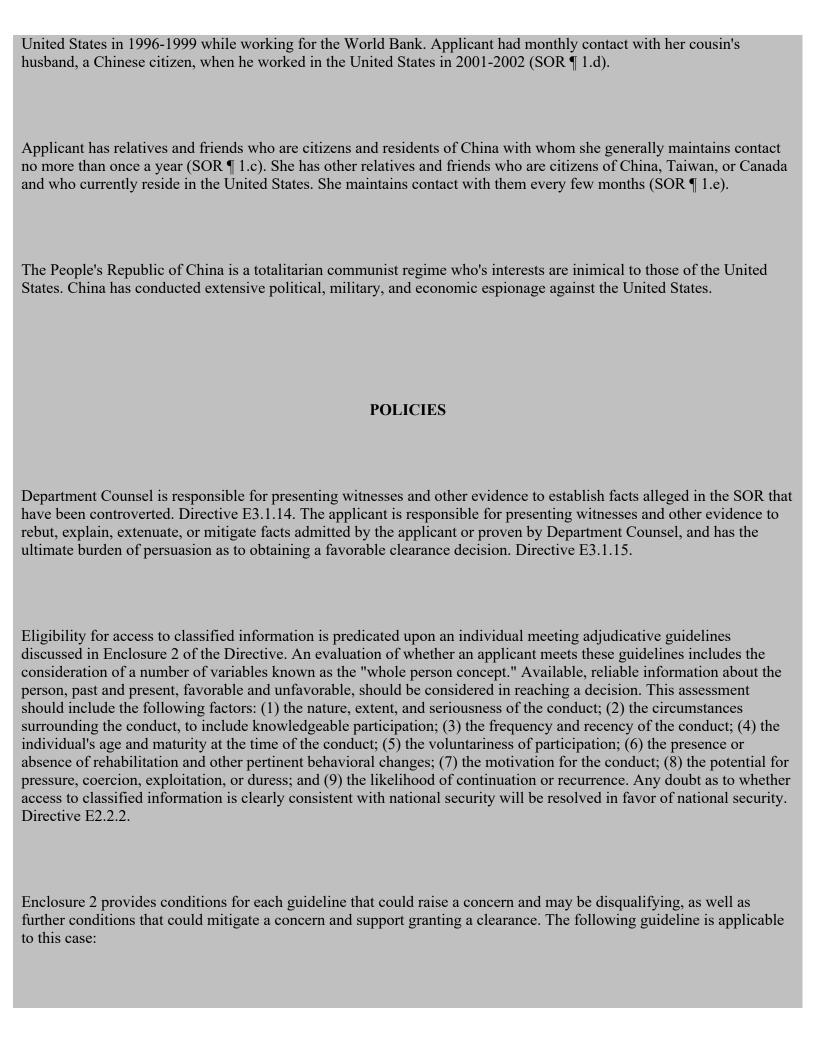
## STATEMENT OF THE CASE

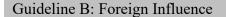
On August 11, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order and Department of Defense Directive, (2) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline B (Foreign Influence). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On August 26, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 30, 2004. A notice of hearing was issued on February 20, 2004 and the hearing was held on March 3, 2004. During the hearing, two Government exhibits (Govt Ex), two Applicant exhibits (Ap Ex), and the testimony of three Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on March 9, 2004.

# FINDINGS OF FACT







A security risk may exist when an individual's immediate family, including co-habitants, 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 create the potential for foreign influence that 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.

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 or present in, a foreign country (Disqualifying Condition 1).

They also include E2.A2.1.2.3, relatives, co-habitants, or associates who are connected with any foreign government (Disqualifying Condition 3).

Conditions that could mitigate security concerns include E2.A2.1.3.1, a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters) co-habitant, or associate(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 (Mitigating Condition 1). They also include E2.A2.1.3.3, contact and correspondence with foreign citizens are casual and infrequent (Mitigating Condition 3).

### CONCLUSIONS

Given the pervasive role of the government in China, Applicant's relatives and friends who are citizens and residents of China may include those who are connected to the government. This raises Disqualifying Condition 3. However, Applicant's contact with these persons is generally no more than once a year and is therefore mitigated in accordance with Mitigating Condition 3. Therefore, I find in favor of Applicant with regard to SOR ¶ 1.c.

Applicant's contact with relatives and friends, who are citizens of China, Taiwan, or Canada and currently reside in the United States, is generally more often than once a year. However, it is still casual and infrequent in accordance with Mitigating Condition 3. Therefore, I find in favor of Applicant with regard to SOR ¶ 1.e.

Applicant's employment by the China Textile Institute occurred before she came to the United States and became a U.S. citizen. The record fails to establish a disqualifying condition with respect to that employment. The same is true with respect to her statement to a DSS special agent (SOR ¶ 1.h). Therefore, I find in favor of Applicant with regard to SOR ¶ 1.g and h.

Applicant's parents and parent-in-law, with whom she maintains close ties, are both citizens and residents of China. All of them live on pensions provided by the Chinese government, a government that has abused its own citizens and that is engaged in espionage against the United States. This establishes Disqualifying Condition 1.

Although the record does not indicate that any of them are agents of a foreign power, it fails to demonstrate that they are not in a position to be exploited by a foreign power. To the contrary, Applicant's parents and parents-in-law are reliant upon retirement income from the Chinese government. They have visited Applicant and her husband on more than one occasion pursuant to visas authorized by the Chinese government. Applicant and her husband have also traveled to China to visit them. Such exposure could leave them vulnerable to exploitation by a foreign power which has not been hesitant to treat its citizens harshly in order to further its own ends.

Applicant relies on decisions of Administrative Judges in other ISCR cases in support of her application. Although such decisions may be cited as persuasive authority, they are not legally binding on an Administrative Judge in another case. ISCR Case No. 98-0761 (December 27, 1999) at p. 4. Security clearance adjudications are individualized determinations where the Administrative Judge is duty bound to apply the law as represented by the Adjudicative Guidelines to the facts of the particular case in keeping with the "whole person" concept. ISCR Case No. 01-20700 (December 19, 2002) at p. 5.

Although there is no basis in the record to question Applicant's character and integrity, the DOHA Appeal Board has recognized that "an applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country hostile to the United States." ISCR Case No. 01-26893 (October 16, 2002) at p. 8. Family ties in a foreign country raise a prima facie security concern that requires the applicant "to present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance." ISCR Case No. 99-0532 (February 27, 2001) at p. 6. This is especially critical given the espionage effort against the United States in which the People's Republic of China is engaged and the threat to the national interest of the United States that it represents. Applicant has failed to meet her burden of persuasion in this case. Therefore, I find against Applicant with regard to SOR ¶ 1.a and b.

Applicant's relationship with a cousin, who is employed by the Chinese government, raises Disqualifying Condition 3. It also appears more than casual because of Applicant's direct contact with her every year. Her returns visits to China make her more vulnerable to coercion, exploitation, or pressure by the Chinese government and raise Disqualifying Condition 6. The record fails to mitigate these concerns. At best it leaves doubt that must be resolved against Applicant in accordance with E2.2.2. of the Directive. Therefore, I find against Applicant with regard to SOR ¶ 1.d and f.

### FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: For Applicant

Subparagraph 1.h: For Applicant

## **DECISION**

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

**Administrative Judge** 

	960, as amended.	v 20, 1960	dated February	Within Industry.	Classified Information	Safeguarding	er 10865.	<b>Executive Order</b>	1.
--	------------------	------------	----------------	------------------	------------------------	--------------	-----------	------------------------	----

2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.