

KEYWORD: Foreign Influence

DIGEST: Applicant, born in the People's Republic of China (PRC), became a United States citizen in 1999. Her mother and two brothers are citizens of PRC and reside in PRC. Her contacts with them are infrequent. None of these family members belong to, participate in, or are active with any government agency of PRC. They are not in a position to be exploited by PRC in a way that could force Applicant to choose between loyalty to these family members and her loyalty to the United States. Applicant's strong attachment to the United States and minimal ties to PRC makes it unlikely that she would respond favorably to any efforts to act against United States interests. Mitigation has been shown. Clearance is granted.

CASE NO: 02-23996.h1

DATE: 05/28/2004

DATE: May 28, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-23996

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esq., Department Counsel

**FOR APPLICANT**

Alan V. Edmunds, Esq.

**SYNOPSIS**

Applicant, born in the People's Republic of China (PRC), became a United States citizen in 1999. Her mother and two brothers are citizens of PRC and reside in PRC. Her contacts with them are infrequent. None of these family members belong to, participate in, or are active with any government agency of PRC. They are not in a position to be exploited by PRC in a way that could force Applicant to choose between loyalty to these family members and her loyalty to the United States. Applicant's strong attachment to the United States and minimal ties to PRC makes it unlikely that she would respond favorably to any efforts to act against United States interests. 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 July 21, 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, or denied. The SOR was based on Foreign Influence (Guideline B) concerns because of the foreign residency and/or citizenship of close family members.

Applicant filed a notarized response dated August 20, 2003, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge. On February 2, 2004, the case was assigned to this Administrative Judge to conduct a hearing, and pursuant to formal notice dated February 13, 2004, a hearing was held on March 16, 2004.

At the hearing, Department Counsel offered four documentary exhibits (Government Exhibits 1- 4) and no witnesses were called. Applicant offered 22 documentary exhibits (Applicant's Exhibits 1-22) and offered her own testimony and that of four other witnesses. The transcript (TR) was received on April 1, 2004.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B (Foreign Influence) of the Directive. The SOR contains four allegations, 1.a., through 1.d., under Guideline B. Applicant admitted SOR allegations 1.b. and 1.c. Those admissions are incorporated herein as findings of fact.

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

Applicant is 41 years old. She is employed by a United States defense contractor that wants her to have a security clearance. She received a Masters Degree in Computer Science from a United States university.

Applicant was born in PRC. She came to the United States in 1994 and became a naturalized United States citizen in 1999. She was married and divorced in PRC and has a son, who is sixteen years of age. Her son was born in PRC, moved to the United States in 1996, and became a United States citizen in 1999. She has been married to her current husband, a United States born citizen, for nine years.

Applicant's mother, a 71 year old PRC citizen, lived in the U. S. with Applicant, but in 2002, she moved back to PRC permanently because of poor health (Tr at 40). While there was some confusion about Applicant's contacts with her mother, ultimately she testified that she has spoken to her three times in the last year (Tr at 57).

Applicant has two brothers, who are citizens of and reside in PRC. She speaks to her brothers approximately one time a year. None of these family members belong to, participate in, or are active with any government agency of PRC or have served in the PRC military (Tr at 40-43).

Since Applicant came to the United States in 1994 , she has traveled to PRC two times, in 1995 and 1997. Before her

trip in 1997, she consulted with the security manager of her company. She debriefed with the manager upon her return to this country (Tr at 54, 55).

Applicant does not anticipate receiving any inheritance or other financial interest from PRC. She and her husband own their own home and are part of an investment group that owns approximately twenty to thirty properties in the United States (Tr at 43- 45).

Applicant has had contact with two PRC nationals since coming to the United States. The first was a woman, whom she met when they were students at a U. S. University. Applicant last spoke to her in 2002. The second contact was with a woman, who had been a coworker of Applicant in PRC. They last spoke in 2001 (Tr at 52-54).

Three witnesses with whom Applicant works testified that she was extremely honest, trustworthy, and devoted to her husband and son (Tr at 15-29).

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (*See*

Directive, Section E2.2.1. of Enclosure 2).

Based upon a consideration of the evidence as a whole, I find the following guideline and concern most pertinent to an evaluation of the facts of 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.

### **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 an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence). Applicant's mother and two brothers are citizens of and reside in PRC. The PRC citizenship and residency of Applicant's 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 her burden of persuasion that it is clearly consistent

with the national interest to grant or continue a security clearance for her.

The evidence of Applicant's mother and two brothers, who are citizens of and reside in PRC, comes within Disqualifying Condition (DC) E2.A2.1.2.1, "immediate family members, or persons to whom the individual has close ties of affection or obligation, who are citizens of, or resident in, a foreign country." The fact that the foreign country in question is PRC, a country under Communist rule, makes it a greater concern; but that fact is not automatically controlling.

The primary factors I have considered include: the lack of government involvement of Applicant's family members and her limited and infrequent contact with them, her very powerful devotion to her son and husband, and her history since coming to the United States. I also have considered the extremely laudatory testimony from her husband and the three witnesses with whom she works, the letters of reference, and her strong feelings concerning this country. Based on the nature of the overall record and the totality of the evidence, I have determined that her family in PRC do not constitute an unacceptable security risk, and Mitigating Condition (MC) 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, applies." MC E2.A2.1.3.3. also applies because Applicant's contacts with her family in PRC is casual and infrequent.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, she would resist it, and would report the incident to the proper authorities.

### **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

**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