

DATE: August 4, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-25205

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

SYNOPSIS

Applicant, a naturalized citizen born in China (PRC) who is a software engineer with a Defense Department contractor. Questions were raised regarding foreign influence. The first three allegations have been mitigated by death of Applicant's father leaving only contacts with two Germans, a relative living in Ireland who is a citizen of the PRC and Singapore, and an engineer living in and a citizen of Singapore. Contacts with all four are casual and infrequent. Clearance is granted.

STATEMENT OF THE CASE

On February 14, 2003, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated February 21, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record, in lieu of a hearing. A supplemental answer was filed on June 12, 2003. Department Counsel submitted the Government's written case on August 30, 2003. A complete copy of the file of relevant material (FORM), consisting of five documents, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He chose not to do so. The case was assigned to, and received by, this Administrative Judge on July 30, 2003.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to foreign influence under Guideline B but denied the

security implications of them. Those admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record and upon due consideration of the record the following additional findings of fact are made.

The SOR alleges six specific allegations regarding Guideline B (Foreign Influence) of the Directive because Applicant's immediate family, and other persons to whom he may be bound by affection, influence, or obligation, are not U.S. citizens or may be subject to duress. Following the death of Applicant's father the government filed a notice on July 9, 2003, that the first three allegations (1.a-c) had been mitigated.

The remaining allegations relate to (d) friendship with a German couple living in Germany, (e) a relative of Applicant who lives in Ireland, and (f) friendship with person living in and a citizen of Singapore.

Applicant met the German couple during tennis lessons in 1998 when the two men were working on a defense project for different contractors. Applicant subsequently visited them in Germany on two weekends while vacationing there. The relative living in Ireland lived with Applicant's family in 1984 for five months while studying and had no contact with Applicant for sixteen years until Applicant's father became ill. The Singapore citizen who is an engineer is a social friend with whom he exchanges Christmas cards and e-mails on rare occasions.

Applicant expresses strong hostility to the PRC government and cites a family history that gives good reasons for that attitude.

## POLICIES

[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10,865 § 2. *See* Executive Order No. 12,968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12,968 § 3.1(b)

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of and residing in a foreign country may raise a disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

Such security concerns could be mitigated by a determination "that the immediate family members 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." Directive, ¶ E2.A2.1.3 Another mitigating factor is when "Contacts and correspondence with foreign citizens are casual and infrequent." Directive, ¶ E2.A2.1.3.4.

## CONCLUSIONS

The withdrawal of the first three allegations in the SOR leaves the case for denial of a clearance with only the barest material and information to establish a prima facie case. The contacts with all four of the remaining foreign individuals mentioned in the SOR are casual and infrequent and the contact with the one family relative has not established that the person is in the immediate family as spelled out in Guideline B, i.e. parents, siblings or children.

All contacts appear to be benign and through legitimate connections of business, family, or friendship. For these reasons, I conclude that the Applicant is eligible for access to classified information.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline B: FOR APPLICANT

Subparagraph 1.a.: Withdrawn

Subparagraph 1.b.: Withdrawn

Subparagraph 1.c.: Withdrawn

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f. : For Applicant

### **DECISION**

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Charles D. Ablard

Administrative Judge