

KEYWORD: Foreign Influence

DIGEST: The Applicant's parents, in-laws, and sister are citizens of and reside in the People's Republic of China. His parents and in-laws are retired teachers. The Applicant's sister is a medical doctor. He has petitioned for her to immigrate to the United States. The Applicant has monthly phone contact with his parents and sister. He has visited them in China in 1998, 2002, 2003 and 2004. He intends no future visits to China. The Applicant came to the U.S. to pursue his Ph.D. He has about \$350,000 in equity in his house. The Applicant's foreign relatives are not connected to any foreign government, and are not subject to coercion. Mitigation is shown. Clearance is granted.

CASENO: 03-22027.h1

DATE: 04/26/2005

DATE: April 26, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-22027

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

The Applicant's parents, in-laws, and sister are citizens of and reside in the People's Republic of China. His parents and in-laws are retired teachers. The Applicant's sister is a medical doctor. He has petitioned for her to immigrate to the United States. The Applicant has monthly phone contact with his parents and sister. He has visited them in China in 1998, 2002, 2003 and 2004. He intends no future visits to China. The Applicant came to the U.S. to pursue his Ph.D. He has about \$350,000 in equity in his house. The Applicant's foreign relatives are not connected to any foreign government, and are not subject to coercion. Mitigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On November 23, 2004, 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 December 20, 2004.

The case was received by the undersigned on February 16, 2005. A notice of hearing was issued on February 23, 2005, and the case was heard on March 17, 2005. The Government submitted documentary evidence, and called one witness to testify, the Applicant. The Applicant also submitted documentary evidence. The transcript (TR) was received on March 25, 2005. The issues raised here are whether the Applicant's perceived Foreign Influence militates against the

granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

## 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 46 years of age, has a Ph.D. in physics, and is employed by a defense contractor who 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

The Applicant, who was born in China, came to the United States in 1986 to pursue his Ph.D. (TR at page 25 at lines 14~24, at page 32 line 5 to page 33 line 3, and Government Exhibit (GX) 1 at pages 1 and 2). After the "Tianamen [Square] Massacre" in 1989, he was granted a "green card" (*Id*). He became a U.S. citizen in January of 2000, and his wife is also a naturalized U.S. citizen (GX 1 at pages 1 and 3).

1.a.~1.g. The Applicant's parents, in-laws, and sister are citizens of and reside in the People's Republic of China (TR at page 14 line 6 to page 16 line 7, at page 16 line 25 to page 18 line 24, and at page 21 line 19 to page 22 line 22). His parents and in-laws are retired teachers (TR at page 37 line 12 to page 39 line 10). They are all in their late 60s or early 70s (*Id*). The Applicant's sister is a medical doctor, working for a civilian hospital (TR at page 16 line 25 to page 18 line 24). The Applicant's foreign relatives are not connected to any foreign government, and are not subject to coercion. He has petitioned for his sister to immigrate to the United States (TR at page 22 line 23 to page 23 line 4, at page 39 line 11 to page 40 line 11, and Applicant's Exhibit (AppX) at page 5). The Applicant has monthly phone contact with his parents and sister (TR at page 16 lines 8~24, and at page 18 line 25 to page 19 line 11). He has visited them in China in 1998, 2002, 2003 and 2004 (TR at page 19 line 12 to page 21 line 15). He intends no future visits to China (TR at page 36 line 23 to page 37 line 3). While visiting China, the Applicant has never been approached by anyone inquiring about his employment in the U.S. (TR at page 27 line 13 to page 28 line 25). If he had been so approached, he would have notified his security officer (*Id*). He has about \$350,000 in equity in his house in the U.S. (TR at page 33 line 24 to page 34 line 20, and AppX A at pages 3 and 4).

### Mitigation

The Applicant's manager, who has known the Applicant for "over five years," avers that he is trustworthy, and should be granted a security clearance (AppX A at page 2).

## **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 his 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 disqualifying conduct, 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 became a U.S. citizen in 2000, obtained a Ph.D. from an American university, and has established a personal net worth of at least \$350,000. He has thus realized the American dream by contributing his talents to his adopted land, and at the same time establishing personal wealth.

The Applicant's parents, in-laws and sister, however, are citizens of and live in China. The second disqualifying condition under Foreign Influence is therefore applicable as "[a]n immediate family member . . . is a citizen of . . . a foreign country." The Applicant's parents and in-laws are retired teachers, all in their late 60s or early 70s. His sister is awaiting the issuance of a green card and will thereafter emigrate to the U.S. Furthermore, none of the Applicant's immediate family are presently connected with any government, and there is no evidence that their presence in China can be exploited by any government. In addition, I conclude that it would be unlikely that the Applicant would even consider any such attempt at exploitation. The first mitigation condition is therefore applicable as "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 persons involved and the United States."

The Applicant has no financial interests in China, and his telephonic contacts with his family are only monthly; and as

such, not out of the ordinary. Furthermore, he plans no further trips to the country of his birth. Mitigation is shown. Guideline B is found in the Applicant's favor.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged foreign influence. The Applicant has thus met the mitigating conditions of Guideline B, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline B.

### FORMAL FINDINGS

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

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. For 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 clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola  
Administrative Judge