

KEYWORD: Foreign Influence

DIGEST: Applicant is married to a citizen of the People's Republic of China (PRC), who came to the U.S. for doctoral studies in 1999. An Eagle Scout in his youth, Applicant has proven to be a very dedicated and capable employee for a university-affiliated laboratory, but an unacceptable risk of undue foreign influence persists where his spouse is a PRC citizen who travels to the PRC for her academic work, and her parents and siblings are citizens and/or residents of the PRC. Clearance is denied.

CASENO: 03-24867.h1

DATE: 12/19/2005

DATE: December 19, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24867

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Josiah M. Black, Esq.

**SYNOPSIS**

Applicant is married to a citizen of the People's Republic of China (PRC), who came to the U.S. for doctoral studies in 1999. An Eagle Scout in his youth, Applicant has proven to be a very dedicated and capable employee for a university-affiliated laboratory, but an unacceptable risk of undue foreign influence persists where his spouse is a PRC citizen who travels to the PRC for her academic work, and her parents and siblings are citizens and/or residents of the PRC. Clearance is denied.

**STATEMENT OF THE CASE**

On December 29, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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. <sup>(1)</sup> DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign influence (Guideline B).

On January 21, 2005, Applicant responded to the SOR allegations and requested a hearing before a DOHA administrative judge. The case was assigned to me on May 25, 2005. On June 15, 2005, I scheduled a hearing for June 24, 2005, Applicant having waived the 15-day notice requirement. At the hearing, one government exhibit and nine Applicant exhibits were admitted. Applicant, his spouse, his father, and his supervisor testified, as reflected in a transcript received on July 8, 2005.

At the government's request, I agreed to take official notice of several publications: excerpts from a declassified redacted version of a report of the U.S. House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China dated January 3, 1999; the National Counterintelligence Center's *Annual Report to Congress on Foreign Economic Collection and Industrial Espionage*, 2000; a Congressional Research Service issue brief titled *Intelligence Issues for Congress*, dated February 1, 2005; the U.S. State Department's *Country Reports on Human Rights Practices-2004 China (includes Tibet, Hong Kong, and Macau)* dated February 28, 2005; the State Department's *Background Note: China*, dated March 2005; a Congressional Research Service report titled *China-U.S. Relations: Current Issues and Implications for U.S. Policy*, dated March 24, 2005. Applicant having objected, administrative notice was declined as to an article reporting on the Defense Personnel Security Research Center's Espionage Database Project titled *Espionage by the Numbers: A Statistical Overview*.

## FINDINGS OF FACT

The government alleged foreign influence concerns: Applicant's spouse has PRC citizenship; his parents-in-law and one brother-in-law are PRC resident citizens; his sister-in-law is a U.S. naturalized citizen living in the PRC; his father-in-law is employed by the PRC government as a representative of an ethnic minority in the PRC; and Applicant traveled to the PRC in 1998 and 2001. Applicant admitted the PRC residency and/or citizenship of these family members as well as his travels to the PRC, but denied his father-in-law's alleged employment with the government of the PRC. He explained his father-in-law, who speaks Kazakh and Uighur fluently, served as a translator at local meetings between the Uighurs and the local government during a period of Uighur unrest in 1997 and was not employed by the PRC government. Applicant's admissions are incorporated as findings of fact. After a complete review of the evidence of record, and upon due consideration of the same, I make the following additional findings:

### Applicant's background

Applicant is a 35-year-old with a doctorate degree in electrical engineering and computer science, who has been employed as a member of the technical staff at a university-affiliated research and development laboratory since January 2003. He held an interim secret-level security clearance until it was withdrawn on issuance of the SOR, although he did not access classified information while he held the clearance. Applicant seeks a secret clearance.

Applicant grew up with his two brothers, both younger, in a rural area in the U.S. where his father worked as a horticulturalist for a winery. His ancestors were some of the first colonists to settle the U.S. In modern times, his paternal grandfather and his grandfather's cousin worked on projects vital to the defense of the Nation. Other relatives, including his youngest brother, served in the military. Justifiably proud of his family's record of service, Applicant became an Eagle Scout during his youth, and at age 18, joined his community's volunteer ambulance corps.

After graduating from his town's public high school, Applicant spent one year at a community college. He transferred to one of the schools in the state university system for his sophomore year. Applicant then obtained a scholarship that enabled him to finish his studies at a private technological university. He graduated in 1995 with bachelor degrees in electrical engineering and Japanese. After a six-month internship in Japan with a U.S. automobile manufacturing company, Applicant returned to the U.S. for graduate studies in electrical engineering on a three-year fellowship awarded him by the Department of Defense.

In 1997, Applicant attended an environmental conference in the U.S. arranged by professors at his university and Japanese university professors to give their respective graduate students the opportunity to meet. Applicant was requested to attend as a translator. At this conference, Applicant exchanged electronic mail addresses with other attendees, including his future spouse, a PRC national. He kept in contact with her after the conference.

On the completion of his masters degree in August 1997, Applicant pursued his doctorate in electrical engineering and computer science (quantum computing) and a Ph.D. minor in applied physics at another prestigious private university in the U.S. In July 1998, Applicant attended a scientific conference in Japan. Interested in visiting the PRC, Applicant contacted his future spouse. He spent a week in Beijing with her as his tour guide.

After she earned her master's degree from a PRC university, she came to the U.S., where in Fall 1999 she began Ph.D. studies in environmental policy engineering at the same university Applicant was attending. They developed a close relationship, and in September 2001, Applicant went with her to the PRC to ask her parents' permission to marry. Able to exchange pleasantries only with her parents due to his rudimentary knowledge of Chinese, Applicant had to rely on his spouse and his spouse's sister to translate. In September 2002, Applicant and his spouse married in the U.S. Her parents did not come from the PRC for the wedding, but two of her siblings attended. The elder of her two brothers is studying in the U.S., and her sister, a U.S. naturalized citizen married to a U.S. native, was living in the U.S. at the time.

Toward the end of his doctoral study, Applicant was extended several offers of academic positions, including from institutes and universities abroad. Applicant elected to work for his present employer, knowing he would not be free to publish or travel at will, as he wanted to reciprocate for the fellowship awarded him by the Department of Defense for his graduate study. In mid-January 2003, he was awarded his Ph.D. degree and began working for the defense contractor at the end of the month.

On February 5, 2003, Applicant executed a security clearance application (SF 86) for a secret-level clearance. He disclosed the PRC residency and citizenship of his parents-in-law and the PRC citizenship of his spouse, who was in the process of applying for her green card. Applicant also reported his contacts with Japanese consular officials in the U.S. in 1993 and 1994 in application for a fellowship to attend a Japanese university, and his internships with Japanese firms in Japan in 1994 and 1995. Applicant also disclosed several trips abroad for education and pleasure, including his travel to the PRC in July 1998 and September 2001.

Over the five years of her doctoral study in the U.S., Applicant's spouse traveled to the PRC two or three times, staying for periods of a few weeks to a few months. She acquired conditional permanent resident status in the U.S. in March 2004. In about Fall 2004, Applicant's spouse became a research fellow on a U.S. private university's energy technology innovation project exploring ways to control automobile emissions in the PRC. This project requires repeated travel to the PRC to supervise collection of emissions data. She traveled to the PRC once since about September 2004 and had another trip planned for July 2005. In her academic work, she interfaces with local environmental protection bureau officials in the PRC and with the project's main research partner in the PRC, a research and technology center under state management. The director of the university's environmental policy program, who serves as her advisor, has more than 40 years of experience with national security issues at a classified level. He recognizes that Applicant's spouse could be approached and pressured by Chinese authorities to assist them in gaining access to national security information possessed by Applicant, but is confident in her determination and ability to recognize and resist any such pressure, including threats to her family members in the PRC, as her primary loyalties are now to her husband and her adopted country.

Applicant's parents-in-law are resident citizens of a western province of the PRC. In the late 1950s, his parents-in-law, who were from poor families, accepted offers of free education from the Chinese government in return for relocating to a western province populated by Uighurs and Kazakhs. They taught in the local public school. Applicant's father-in-law learned the languages of the native Uighurs and of the Kazakhs, and he was eventually promoted to principal at the secondary school before moving on to a local junior college as headmaster in the early 1990s. After a Uighur uprising in 1997, he was "selected" by the PRC local government to lead a "study group" and act as a translator/mediator between the Chinese government and the Uighurs. Away from the junior college for about one year, Applicant returned to find his teaching position had been filled by a "crony" of the local Communist Party secretary of the school. Applicant's father-in-law stayed on about a year at salary but with no job appointment until he retired. Applicant's mother-in-law retired from teaching in 1993 or 1994. Applicant has not seen or corresponded by telephone or otherwise with his parents-in-law since his visit to them in 2001 because of the language difficulties.

Applicant's spouse's sister was living in the PRC with her husband and children as of June 2005. In June 1990, she married a native U.S. citizen who was in the PRC teaching English. They came to the U.S. in 1991 for his education, and two sons were born to them in the U.S. She became a U.S. naturalized citizen in 1994. In 1995, the family returned to the PRC where he sought business opportunities for his U.S. employer, a company that sold lighting, automobile, and cell phone manufacturing lines to companies operating in the PRC. In 1997, they started an agricultural business in the PRC, completely owned and operated by a company incorporated in the U.S. Two daughters born to them in the PRC are U.S. citizens and possess U.S. passports. Every two to three years, the family returns to the U.S. for four to six months at a time so that the children can attend U.S. schools.

The elder of Applicant's spouse's two brothers is a doctoral student in metallurgy at a university in the U.S. He graduated from college in the PRC, and worked for more than ten years as a metallurgical engineer in an aluminum plant in the PRC before coming to the U.S. for graduate study. In August 2003, he was awarded his masters degree from a U.S. college. Married and the father of one child, he tried unsuccessfully to obtain U.S. immigrant visas for his spouse, an electrical engineer, and child. In April 2004, he filed for Canadian immigration for himself and his family. He plans to immigrate to Canada as soon as he finishes his Ph.D. studies in the U.S. and expects his spouse and child to have already settled there. As of June 2005, his spouse and child were still in the PRC living with his parents. He attended Applicant's wedding and visited with Applicant for about a day and a half in about 2003 before he started his Ph.D. studies.

The younger of Applicant's spouse's brothers has his bachelors and masters (MBA) degrees from PRC universities. After this brother earned his bachelor's degree in agricultural economy, he worked for a few years as a reporter and assistant editor for a local newspaper. From May 1996 to April 2000, he was a sales manager for a private pharmaceutical company. Since earning his masters degree in July 2003, he has been employed as a project manager for a privately owned company in the PRC that started in the production of chemical building materials but has since diversified into petrochemicals, home appliances, sports, insurance, and healthcare. He is married and has a three-year-old daughter. His spouse taught in a public school training high school graduates to become elementary school teachers. Since 2004, she has worked as an administrative assistant in a private school providing English training classes for children. Applicant has never talked to this brother-in-law, who lives on the PRC's east coast.

Applicant's parents-in-law are members of the Chinese Communist Party (CCP), although they are not currently politically active. His father-in-law had been CCP secretary at his school until the mid-1980s, where his role was to organize people and study policy. In 1997, Applicant's spouse joined the CCP so that she would have the opportunity to advance her career in the PRC ("it's just even in the academic field if you want to get promoted to be a professor, and be a party member, may also help your promotion." Tr. 151). Applicant's spouse had been recruited by the party because of her academic prowess. By marrying a U.S. citizen and choosing to remain in the U.S., she lost her party membership.

Applicant is regarded by his supervisor as an outstanding employee, one of the best in his group and very dedicated and hardworking. He continues to lead a project on quantum computing involving fabrication of devices and then testing of those devices and to prototype other technologies with more immediate application, but is no longer allowed to work late into the evening or on weekends because of the withdrawal of his secret clearance. Applicant's supervisor has no reservations about him being granted a secret and even higher level clearance. He has been straightforward and honest in his interactions with his coworkers and project sponsors, informing one sponsor that a postdoctoral student on his project had misrepresented the findings of their work. On another occasion, Applicant received an unsolicited request by electronic mail from an unknown graduate student, whom he presumed to be Chinese, requesting that Applicant meet with him to discuss his doctoral research. Applicant met with this graduate student only after first checking with his supervisor at the laboratory and having his coworker accompany him. Applicant also appropriately handled a request from a Chinese postdoctoral student in his group on the university campus, who was returning to the PRC and asked to tour the laboratory facilities before he left.

Applicant has been specifically briefed by his employer's security division about the security threat posed by the PRC, including the tactics used to establish connections and means to thwart PRC attempts to gain information. Applicant also educated himself by reading a copy of the "Cox Report." Applicant and his spouse have discussed the possibility of pressure being placed on her family members in the PRC or even herself when she is in the PRC and agreed that they would not succumb to that kind of influence and he would contact his employer's security department.

## **PRC's political and economic state**

On January 1, 1979, the U.S. formally recognized the government of the People's Republic of China (PRC) as the sole legal government of China. The PRC is an authoritarian state with ultimate control of all state military, commercial, and political activities constitutionally vested in the CCP. As the country transitions from a centrally-planned economy to a market-based economy, the PRC has gained power and influence internationally while improving the living standard for its citizens. The PRC is now the third largest trading partner of the U.S. and has been an important partner in U.S. counterterrorism efforts since September 11, 2001.<sup>(2)</sup> PRC-U.S. relations are now "smoother" than they have been at any time since the Chinese suppression of the Tiananmen Square protests in 1989.<sup>(3)</sup>

The PRC has a history of targeting U.S. intelligence, economic, and technical information, including dual use technology with an ostensibly civil purpose that can be integrated into the PRC military and industrial base. The PRC is known to blend intelligence and non intelligence assets and to rely on different collection methods (e.g., including illegal transfers of technology through a third country, joint ventures with foreign firms, scientific conferences) to obtain military and economic information.<sup>(4)</sup>

As of late 2004, the PRC's human rights record remained poor. Citizens lacked the freedom to express opposition to the CCP-led political system and to change their national leaders or form of government. In violation of internationally recognized norms, the PRC continued its crackdown on independent writers, religious organizations, and political dissenters, harassing, detaining, and in some cases imprisoning, those perceived as threatening central government authority or national stability. Abuses included instances of torture and mistreatment of prisoners, coerced confessions, arbitrary arrest and detention, and even extrajudicial killings. The PRC prosecuted individuals for subversion and leaking state secrets as a means to harass and intimidate, and infringed on individuals' right to privacy.<sup>(5)</sup> As of March 2005, the U.S. was concerned about the PRC's track record of weapon sales, technology transfers, and nuclear energy assistance to "rogue" nations (Iran and Syria) and the official adoption by the PRC's National People's Congress of an "anti-secession" law, aimed at reining in those who advocate independence for Taiwan.<sup>(6)</sup>

## 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

After a complete review of the evidence of record, the following adjudicative guideline is most pertinent to an evaluation of Applicant's security suitability:

**Foreign Influence.** 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 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. (¶ E2.A2.1.1.)

## **CONCLUSIONS**

Having considered the evidence in light of the appropriate legal precepts and factors, and having assessed the credibility of those who testified, I conclude the government has established its case with respect to Guideline B, foreign influence.

Applicant is a native-born U.S. citizen with family roots in the U.S. dating back to colonial days. However, his spouse is a citizen of the PRC with conditional permanent resident status in the U.S. Her parents and the younger of her two brothers are resident citizens of the PRC. She also has a sister who is a U.S. naturalized citizen married to a native-born American, but lives in the PRC. Her older brother is a PRC citizen studying in the U.S. whose spouse and child live in the PRC. Applicant has never met the younger of his brothers-in-law, had in-person contact with his parents-in-law only during the trip to the PRC in 2001, and does not correspond with them. However, the risk of undue foreign influence cannot be properly evaluated without considering the significance of his spouse's ties to the PRC and the possible effect they may have on Applicant's contacts under Guideline B (*see* ISCR Case No. 01-02452, App. Bd. Nov. 21, 2002). Although Applicant does not have close bonds with his spouse's parents and siblings (excepting his sister-in-law with whom he has developed a personal relationship), he failed to show that he has no obligations to them or that his spouse's ties are casual rather than close. Disqualifying conditions ¶ 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,* and ¶ E2.A2.1.2.2. *Sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists,* clearly apply.

The foreign influence concerns raised by these family connections to the PRC may be mitigated where it can be determined that his relatives 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 Applicant to choose between loyalty to them and the United States (*see* MC ¶ E2.A2.1.3.1.).<sup>(7)</sup> Applicant's sister-in-law owns and operates with her American-born spouse an agricultural (fruits growing) business in the PRC. The elder of Applicant's brothers-in-law worked for ten years as an engineer before he came to the U.S. for his graduate study in metallurgy. The younger is employed by a privately-owned manufacturer of chemical building materials that has diversified into petrochemicals, home appliances, sports, insurance, and healthcare. There is nothing about the siblings' occupations that suggest a connection to a foreign government, its military, or intelligence operations, and the evidence does not establish that they are or ever were foreign agents.<sup>(8)</sup>

Applicant's parents-in-law in contrast spent their careers in the public sector as educators. Awarded for their hard work with CCP memberships, Applicant's father-in-law was CCP secretary at his school until the mid-1980s, and from 1997-98 he served the local government as a mediator/leader of study groups following a Uighur uprising. Whether he was "selected" for this position because of his stature at the junior college, because of his trilingual abilities, or because of his CCP membership, he was acting as an employee or agent of a foreign government, albeit at the local level (*see* DC E2.A2.1.2.3. *Relatives, cohabitants, or associates who are connected with any foreign government*). Applicant's father-in-law retired in 1999 when he returned to find no open teaching position; his mother-in-law had retired in 1993 or 1994, so any government connection at this point is through their continued membership in the CCP. The U.S. State Department reports that the PRC government has always been subordinate to the CCP (*see Background Note: China*, March 2005), functioning to implement the CCP's policies. Applicant has the burden to prove his relatives are not foreign agents, although there must be evidence the foreign national is acting in the U.S. as an officer or employee of a foreign power or as a member of an international terrorism group, or is otherwise acting for or on behalf of a foreign power that engages in clandestine intelligence activities in the U.S. The evidence does not establish that Applicant's parents-in-law or his spouse has any active role in determining or enforcing party policy or that they are engaged in the clandestine intelligence gathering activities against the U.S. as defined in 50 U.S.C. §§ 1801 and 438.

Even if none of his relations by marriage is a foreign agent, the inquiry in a foreign influence case is not limited to consideration of whether the foreign contacts or connections are agents of a foreign power. The foreign contacts or connections must also be evaluated in terms of whether they place an applicant in a position of vulnerability, even if there is no evidence that a foreign country has sought to exploit that vulnerability. (*See* ISCR Case No. 00-0628, App. Bd. Feb. 24, 2003) Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service.

Although not specifically stated in the adjudicative guideline, the particular foreign country of which the relative or associate is a citizen or resides is relevant in determining the likelihood of undue influence being brought to bear on its citizens/residents. Countries with strong democratic institutions and respect for the rule of law are generally regarded as presenting less of a risk than totalitarian regimes with a record of human rights abuses, support for terrorist activities, or hostility to the U.S. While relations between the U.S. and the PRC are reportedly "smoother" than they have been at any time since 1989, the PRC has a history of targeting U.S. intelligence and economic information, and it continues to have a poor human rights record against its own citizens. Influence can also take forms more subtle than arbitrary detention, imprisonment, or torture. Applicant's spouse and her parents have already succumbed to a form of noncoercive

influence, her parents by migrating to western China and becoming CCP members. Applicant testified his father-in-law did not seek to serve as a mediator for the local government in 1997 but felt he had no choice (Tr. 64). Furthermore, Applicant's spouse joined the CCP in 1997 for the educational and career benefits. The academic accomplishments of his spouse have not gone unnoticed by the PRC, as she was recruited for membership in the CCP. While she is no longer a member of the CCP and does not support the CCP ideology or policies, she continues to travel to the PRC for the environmental project where she meets with PRC officials, increasing the risk of exploitation that already exists because of her PRC citizenship and the PRC citizenship and residency of her family members. Mitigating condition E2.A2.1.3.1. does not apply.

Aware through briefings from his employer and self-education that the PRC exploits cultural ties and connections to gain sensitive technology, Applicant acknowledges that there is the possibility of undue foreign influence, although he considers it highly unlikely. He and his spouse have agreed they would report any improper contact or influence to his employer. (Tr. 95-96) The DOHA Appeal Board has consistently held that a statement of intention about what an applicant will do in the future under some hypothetical set of circumstances is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances. (*See* ISCR Case No. 99-0511, App. Bd. Dec. 19, 2000). To his credit, Applicant reported to his supervisor inquiries from Chinese students that he considered questionable, including a request to view the laboratory. However, mitigating condition ¶ E2.A2.1.3.4. *The individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required*, has limited application in this case where Applicant's resolve has not been tested with regard to his spouse or her family members. Applicant is a principled person with a strong sense of obligation to his employer as well as to his country, but there is an unacceptable risk of undue foreign influence as long as his spouse and her family members are subject to the laws and/or physical jurisdiction of PRC authorities. SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., and 1.f. are resolved against Applicant.

## FORMAL FINDINGS

Formal findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

### Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

## DECISION

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

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under the authority of 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).
2. See the U.S. State Department's *Background Note: China*, dated March 2005.
3. See the Congressional Research Service's report for Congress, *China-U.S. Relations: Current Issues and Implications for U.S. Policy*, dated March 24, 2005.
4. See the declassified version of the January 1999 report of the House of Representatives Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China (105<sup>th</sup> Congress, 2d Session).
5. See the U.S. State Department's *Country Reports on Human Rights Practices-2004* for China (including Tibet, Hong Kong, and Macau), dated February 28, 2005.
6. See the Congressional Research Service's report for Congress, *China-U.S. Relations: Current Issues and Implications for U.S. Policy*, dated March 24, 2005.
7. See MC E2.A2.1.3.1. *A determination that the immediate family members(s), (spouse, father, mother, sons, daughters, brothers, sisters) cohabitant, 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.* The mitigating condition is bifurcated in nature ["A determination that the immediate family member(s). . . are not agents of a foreign power or in a position to be exploited by a foreign power. . . ."]. To construe the conjunction "or" as "and" would be against the plain language. While MC E2.A2.1.3.1. can be applied if an applicant satisfies only one of the two parts, a given adjudicative condition (either disqualifying or mitigating) cannot be read in such a way to be inconsistent with other adjudicative conditions. Under Guideline B, if foreign relations, who are not government agents or employees, are in a position to be exploited then MC E2.A2.1.3.1. does not mitigate the foreign influence concerns.

8. *See* 50 U.S.C. §1801, which defines agent of a foreign power as:

(1) any person other than a United States person, who-

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine activities in the United States contrary to the interests of the United States when the circumstances of such person's presence in the United States indicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who-

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power;

(D) knowingly enters the United States under a false or fraudulent identity for or on behalf of a foreign power or, while in the United States, knowingly assumes a false or fraudulent identity for or on behalf of a foreign power; or

(E) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

Under federal law, the terms foreign power and agent of a foreign power have the same meanings with respect to national security and access to classified information. *See* 50 U.S.C. § 438.