

DATE: December 14, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-00451

## **DECISION OF ADMINISTRATIVE JUDGE**

**ROBERT J. TUIDER**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant was unable to mitigate her close family ties to her citizen resident parents in China, her citizen resident aunt and cousin in China, and her sister who is a citizen of China and resident of Singapore. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 16, 2003, DOHA issued a Statement of Reasons (SOR) <sup>(1)</sup> detailing the basis for its decision-security concerns raised under Guideline B (Foreign Influence), and Guideline C (Foreign Preference) of the Directive. Applicant answered the SOR in writing on October 28, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me on March 29, 2004. On June 16, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

At the onset of the hearing , the Government withdrew the concern alleged under Guideline C (Foreign Preference). The Government presented three exhibits, which were marked as Government Exhibits (GE) 1 through 3, without objection. Applicant presented two exhibits, which were marked as Applicant Exhibits (AE) A and B, without objection. DOHA received the transcript (Tr.) of the proceeding on June 30, 2004.

### **FINDINGS OF FACT**

Applicant is a 32-year-old computer system analyst for a defense contractor. She was born and raised in the Peoples Republic of China (China). She attended a university in China from 1990 to 1993 and graduated with a degree in international finance.

After graduating from college, she worked for a youth travel agency until July 1995 at which time she was awarded a full scholarship to a university in the United States. She entered the United States on a student visa. She attended a

university from July 1995 to May 1998 and was awarded a dual Master's Degree in English and Telecommunications and Network Management.

In January 1999, she was hired by her current employer, where she has been employed for five years. She is seeking a security clearance "to get better job opportunities for advancement." Tr. 9. She married her husband, a United States born citizen, in March 1998. They have two children, a five-year-old daughter, and a three-year-old son. Applicant became a naturalized United States citizen in August 2002.

Applicant's mother is 59 years old and her father is 61 years old. Both parents are citizen residents of China. Both Applicant's parents worked for a company that manufactured electronic components for motorcycles. Both parents marketed the products manufactured by their employer. The Chinese government owned the company they worked for and unfortunately for her parents the company collapsed. Her parents retired early and receive a small pension from the Chinese government. Tr. 33. Applicant speaks to her parents approximately once a week on the telephone. GE 2, p. 3.

Applicant sends approximately \$3,000.00 a year to her parents in China. Tr. 34. She has contributed to her parents' support since she was a student in China. Tr. 34. She stated, "As a Chinese daughter, it's like a dutiful thing to do." Tr. 34. Applicant's parents have visited her in the United States three times -- when Applicant and her husband were married and after the birth of each of their two grandchildren.

Applicant has one other sibling, a younger sister, who is a citizen of China and resident of Singapore. Her sister teaches at a fashion institute in Singapore and intends to apply for citizenship in Singapore. Tr. 37. Applicant's brother-in-law is a computer science university professor. He is also a citizen of China and resident of Singapore and like his wife intends to apply for citizenship in Singapore. Tr. 38. Applicant speaks to her sister approximately once a month on the telephone. Tr. 40. Applicant's sister, who lives in Singapore also contributes to the support of their parents. Tr. 35.

Applicant maintains a relationship with her maternal aunt, who is approximately 55 years old and is a citizen resident of China. Her aunt worked for a charcoal company as an accountant and is now retired. Her company was owned by the Chinese government and collapsed. When her company collapsed, she took an early retirement and receives a small pension from the Chinese government. Applicant speaks to her aunt on the telephone approximately once a month and exchanges greetings cards with her. Tr. 42-43.

Applicant maintains a relationship with her cousin who is a citizen resident of China. Her cousin is the daughter of her maternal aunt, discussed above. She recently graduated from college with a degree in accounting. Before graduating from college, Applicant remains in regular contact with her cousin through e-mail. Since her cousin graduated from college, she has been busy looking for a job and Applicant and her cousin "haven't talked in a long time." Tr. 45.

Applicant maintains contact with two college classmates, who are citizen residents of China. The contact consists of one-to-two e-mails or telephone calls annually. GE 2, p. 3, Tr. 46-47. Their contact generally involves discussions about their respective children. Tr. 48.

Applicant and her husband have owned their home for six years. Applicant is registered to vote, maintains bank accounts in the United States, and exercises all rights of United States citizenship. Applicant expressed great affection and loyalty for the United States.

I took into account the information contained in the Consular Information Sheet, China, issued by the U. S. Department of State, Bureau of Consular Affairs. GE 3.

## 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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from

conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure (2) of the Directive sets forth personal 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

## CONCLUSIONS

### **Guideline B-Foreign Influence**

In the SOR, DOHA alleged Applicant's parents, aunt and cousin, and two associates are citizen residents of China; (¶ 1.a, 1.c, 1.d.), and that Applicant's sister is a citizen of China and resident of Singapore (¶ 1.b.). A security risk may exist when an Applicant's immediate family, or other persons to whom 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.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR-Applicant has immediate family members who are citizen residents of a foreign country. DC E2.A2.1.2.1. While the mere possession of family ties with persons in a foreign country is not, as a matter of law,

automatically disqualifying . . . [it] does raise a prima facie security concern sufficient to require an applicant to present evidence of rebuttal, extenuation or mitigation sufficient to meet the applicant's burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

ISCR Case No. 99-0424, 2001 DOHA LEXIS 59 at \*\*33-34 (App. Bd. Feb 8, 2001). It is a mitigating condition if the immediate family members or associates are not agents of a foreign power and are not in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to his family members and loyalty to the United States. MC E2.A2.1.3.1.

Security clearance decisions are not an exact science. Instead, they are predictive judgments about an Applicant's security suitability in light of that person's past conduct and *present circumstances*. *Egan*, 484 U.S. at 528-29.

In particular, Applicant has strong ties of affection or obligation to her parents, who are citizen residents of China. She maintains weekly telephone contact with her parents, sends them money, and visited them in China. It was clear from Applicant's demeanor, she is very fond of and devoted to her parents.

Applicant has strong ties of affection or obligation to her maternal aunt, who is a citizen resident of China. She

maintains frequent contact with her aunt by telephone and exchanges greeting cards. To a lesser extent, she maintains similar contact with her cousin, also a citizen resident of China.

Applicant has strong ties of affection or obligation to her sister, who is a citizen of China and a resident of Singapore. She maintains frequent contact with her sister by telephone and e-mail.

Disqualifying Condition (DC) 1 applies: 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 applies. E2.A2.1.2.1.

Based on the close ties Applicant maintains with her parents, sister, aunt and cousin, I am unable to apply any Mitigating Conditions. I find against Applicant for concerns alleged in ¶ 1.a., 1.b., and 1.c. of the SOR.

Perhaps at one time, Applicant's contact and association with her former college classmates qualified them as persons to whom she had close ties of affection. However, it is difficult to see how their current relationship consisting of semi-annual e-mails limited to discussing their children falls into this category. No Disqualifying Condition applies. I find for Applicant for the concern alleged in ¶ 1.d of the SOR.

Applicant is a hard working, productive, and honorable person. Applicant has become fully integrated in the American way of life and professes strong ties of affection to the United States. She married a United States born citizen, has two children, owns a home, and exercises all rights of citizenship. Regrettably, I am unable to find in her favor based on the unmitigated foreign influence concerns discussed above.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2. Guideline C: WITHDRAWN BY GOVERNMENT

Subparagraph 2.a.: Withdrawn by Government

### **DECISION**

In light of all of 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.

**Robert J. Tuider**

**Administrative Judge**

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.