

DATE: March 5, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01621

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was born, raised, and educated in the People's Republic of China. She immigrated to the United States in 1989 to obtain her doctorate. Her parents and parents-in-law are citizens and

residents of the People's Republic of China. In 1988 she worked for a government owned power company. Applicant contacts her family and relatives weekly. Applicant has not mitigated the serious security concerns under Guideline B (Foreign Influence). Clearance is denied.

STATEMENT OF THE CASE

On October 1, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline B (Foreign Influence) 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, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn Answer, dated October 19, 2003, Applicant responded to the SOR allegations. She requested her case be decided on the written record in lieu of a hearing. On November 10, 2003, Applicant was given a complete copy of the file of relevant material (FORM) [\(1\)](#). She was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a response to the FORM by the December 24, 2003, due date. She submitted a two page letter dated December 17, 2003. This case was assigned to me on January 15, 2004.

FINDINGS OF FACT

Applicant admitted to the allegations in the SOR. Those admissions are incorporated herein as findings of fact. After a complete review of the record evidence, I make additional findings of fact:

Applicant is 41 years old, married with one minor child, and employed by a defense contractor as a research scientist. Applicant has a doctorate degree in chemical engineering. (Item 4 at 1 to 5)

Applicant graduated from college and graduate school in the People's Republic of China, where she was born and raised. In 1989 she immigrated with her husband to the United States. She enrolled in an American university to obtain her doctorate degree in chemical engineering. She graduated in August 1996. (Item 4 at 1 to 3)

Applicant became a naturalized U.S. citizen on July 29, 2002. Her husband was nationalized in 2000. Her son was born in the United States. Applicant has had a U.S. passport since July 31, 2002, after she was naturalized. Her Chinese passport was last issued in 1999, with a seven year validity period. Applicant contends her Chinese passport expired automatically when she became a U.S. citizen. She submitted no evidence to support her assertion. (Item 4 at 1 to 7)

Applicant worked for a Chinese company from 1988 to 1989. Applicant admits these companies were owned by the Government of the People's Republic of China. She also admits she, like other graduates of the Chinese educational system, was assigned by the Chinese Government to work for that company. She worked there while preparing her applications to attend graduate school in the United States. (Item 4 at 1 to 7; FORM response at 1)

Applicant's parents are residents and citizens of the People's Republic of China (PRC), living in Beijing. Her husband's parents are also residents and citizens of the People's Republic of China, also living in Beijing. Both sets of parents are 69 to 70 years old, having been born in 1934 or 1935. Applicant submitted no information concerning their former or current employment in the PRC.

Applicant speaks by telephone weekly with both sets of parents. (Item 4 at 1 to 7; Item 5 at 1 to 4; FORM response at 2)

Applicant made two trips to China, one in 1997 and the other in 2002. These trips were for business and family reasons. (Item 5 at 4; FORM response at 1 and 2)

Applicant contacts her sister-in-law twice a month by contact. Her sister-in-law lives in the United States and is a research scientist. Her sister-in-law is a citizen of the PRC, but a permanent resident of the United States. (Item 5 at 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 judgement, 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* Section 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

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. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

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, ¶ E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial 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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. See Directive Para E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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 Para. E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see Exec. Or. 12968 Section 3.1(b).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

GUIDELINE B: Foreign Influence

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 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. Directive ¶ E2.A2.1.1.

Conditions that could raise a security concern and may be disqualifying include:

(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. Directive ¶ E2.A2.1.2.1.

Conditions that could mitigate security concerns include:

None

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Applicant has relatives by birth and marriage in the PRC. Applicant is in telephone contact with her relatives in the PRC every one or two weeks. Her family contacts are intimate and frequent. Therefore, Disqualifying Condition (DC)1 applies.

There are no Mitigating Conditions (MC) applicable here. Applicant did not submit any information about her parents or parents-in-law's present or former employment, or connections to the PRC government. The burden is on the Applicant to show that her relatives are not agents of a foreign power or in a position to be exploited by a foreign power that could force Applicant to choose between her loyalty to her parents and relatives, and her loyalty to the United States. There is no evidence to demonstrate she has mitigated DC 1. With the frequency of contact with her relatives in China, it would be difficult to overcome the presumption that she has a close and frequent connection with her relatives in China. For these reasons, there are no MC applicable in this case.

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: Against the Applicant

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge

1.