

DATE: February 16, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-02881

## **DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

#### **FOR APPLICANT**

Arthur Ross, Esquire

### **SYNOPSIS**

This 23-year-old computer technician was born in the People's Republic of China (PRC) in 1981, and came to the U.S. with his mother at age 13/14. He grew up as an American, went to school here, and became a U.S. citizen at 18. He has long and extensive ties to the U.S., and warm but not close ties to his father in the PRC. He has demonstrated by his dedication to the U.S. that he is not vulnerable to any pressure intended to coerce him to act against U.S. interests. Itigation has been established. Clearance is granted.

### **STATEMENT OF THE CASE**

On June 14, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On June 22, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The matter was assigned to me for resolution on August 12, 2004. A Notice of Hearing was issued on August 23, 2004, setting the hearing for September 30, 2004. At the hearing, the Government introduced four exhibits (GX 1 - 4). Applicant testified and introduced five post-hearing exhibits that were not objected to by Department Counsel (Applicant's Exhibits (AX) A - E). All exhibits were admitted as marked. The transcript was received at DOHA on October 18, 2004.

### **FINDINGS OF FACT**

Applicant is a 23-year-old technician for a defense contractor. The June 14, 2004 SOR contains three allegations under

Guideline B (Foreign Influence). In his Response to the SOR, Applicant "admit[s]" all three allegations, which are admitted and accepted as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

#### Guideline B (Foreign Influence)

1.a. - Applicant's father, a retired police officer, is a citizen of the People's Republic of China (PRC) and currently resides in that country. The father was a local police officer (Applicant believes he was a street patrolman) in a small town near a large city in southern China. He has no contact with the PRC government;

1.b. - Applicant maintained twice yearly telephonic contact with his father, but has not spoken to him since 2002. His father is nonpolitical and did not ask any questions about his work or the United States (Tr at 30). The father is not interested in moving to the United states (Tr at 50).

1.c. - Applicant traveled to the PRC for a week in April 2002, to attend the funeral of his grandfather (Tr at 28).

Applicant came to the U.S. as a teenager, and became a U.S. citizen in 1997, as did his mother, at which time they both renounced their PRC citizenship (GX 1) and obtained U.S. passports (Tr at 48). He renewed his U.S. passport in 2002 and used it to travel to the PRC (Tr at 49). His mother is divorced from his father. His mother came to the United States five years before Applicant came to the U.S. and is not interested in returning to the PRC. Applicant lived with her here from 1995 to 1999, when he moved out on his own. Applicant has other relatives residing in the United states (Tr at 44). Applicant installs new computers at military installations and then shows the troops how to use them (Tr at 32).

Several friends and associates speak highly of Applicant's work ethic and dedication (AX A and AX B). One relates an incident wherein Applicant helped save another person's life (AX C). Another colleague, who works with Applicant on a U.S. base, says that Applicant is very "pro American and loves this country" (AX D). The fifth writer sees Applicant as having "security awareness" and being 'extremely trustworthy" (AX E)

Applicant is clear about what he would do if ever approached by anyone to act against U.S. security interests. He would let someone know and even "turn in [his] badge if something like that happened" (Tr at 61).

### **POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing participation; (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 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

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

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics

and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

## CONCLUSIONS

Under Guideline B, "a security risk may exist when [members of ]an individual's immediate family . . . are (1) not citizens of the United States or (2) may be subject to duress." These situations may create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of foreign countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Applicant makes the point that he left the PRC when he was 13/14, and came to the U.S. with his mother, when she and Applicant's father divorced. His contacts with his father began on a "quarterly basis (GX 2), but became increasingly infrequent as the years went by. Applicant grew up in American culture, went to school here, and has worked providing computer services with the American military for years, with no problems at all. He identifies himself as an American, with only limited ties to the PRC and no affection for that country.

While relatives in any foreign country may present a risk, this factor is not an automatic bar to holding a security clearance. Fairness and common sense require an analysis of the entire record and an overall common sense determination. The lack of any improper contact in the past is not evidence establishing that it will not happen in the future, but it is a positive factor that must be considered along with all other evidence, including, but not limited to, Applicant's statement that his allegiance is only to the United States. I have considered the fact that the other country is the PRC. However, based on the totality of the record, including his service to this country, I conclude (1) that Applicant has done nothing to suggest any preference for the PRC; and (2) there is minimal risk after all these years that Applicant's father will be pressured into contacting Applicant for improper purposes.

In addition, based on his history of residence in and involvement with this country, there is even less risk that Applicant would respond to any such contact by agreeing to act against U.S. interests. I find Applicant to be highly credible and a person of high integrity. I conclude he would report any contact from his father or anyone else to act against U.S. security interest.

Since the SOR does not contain any allegations of any preference for the PRC, I have considered this factor only in the context of evaluating whether Applicant might be vulnerable to foreign influence, when considered under Guideline B or the general guidelines found in Section E2.2.1 of the Directive. In any case, I conclude that these abstract questions as to risk are outweighed by Applicant's certainty as to how he would respond if ever asked to do something against U.S. interests.

***Disqualifying and Mitigating Conditions*** - Disqualifying Conditions - (1). An immediate family member . . . is a citizen of, or resident or present in, a foreign country; and (3) relatives who are connected with any foreign government.

Mitigating Conditions - MC 1 requires a "determination that the immediate family member(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." This conclusion is not by itself determinative. The applicability or nonapplicability of a specific disqualifying or mitigating condition from the Adjudicative Guidelines is not solely dispositive of a case. <sup>(1)</sup> Rather, decisions should be based on "articulated . . . reasons all . . . reflecting a plausible interpretation of the evidence in this case, for why [the Administrative Judge] concluded Applicant was not vulnerable to foreign influence." <sup>(2)</sup>

Based on the totality of the evidence, I conclude the integrity he has shown during the years he has spent in the U.S. demonstrate he is not vulnerable to improper pressure, even from his own family. The facts and circumstances surrounding his father in the PRC suggest a level of affection for his father, but not to the point of overwhelming his affection for the United States, and appreciation for the opportunities it has given him. He has demonstrated his unequivocal loyalty to and preference for the United states. Finally, I conclude that he can be relied upon to refuse and to report any attempts to persuade or coerce him to act improperly.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline B (Foreign Influence) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**BARRY M. SAX**

**ADMINISTRATIVE JUDGE**

1. *Id.*, citing ISCR Case No. 02-11810 (June 10, 2003), at page 5
2. *Id.*, at pages 3, 4.