

DATE: April 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05645

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

Jim Norman, Department Counsel

FOR APPLICANT

Shouming Li, Personal Representative

SYNOPSIS

Applicant has established that her Chinese-born daughter became a U.S. citizen when Applicant became a U.S. citizen in 1999. However, she has failed to show that her father and four brothers, who are citizens and residents of China, are not in a position to be exploited. Her contact and that of her husband and minor daughter with relatives in China includes seven total trips to China in nine years, as recently as 2001. Such visits by Applicant, as well as by other family members, increases applicant's vulnerability to coercion, exploitation, or pressure by the Peoples' Republic of China. Clearance is denied.

STATEMENT OF THE CASE

On September 17, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline B (Foreign Influence). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to classified information and recommends that her case be submitted to an Administrative Judge.

On October 7, 2003, DOHA received a response to the SOR from Applicant, in which she requested a hearing. The case was assigned to me on December 22, 2003. A notice of hearing was issued on January 7, 2004, and the hearing was held on January 22, 2004. During the hearing, seven Government exhibits, six Applicant exhibits, and the testimony of two Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on February 3, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following

findings of fact:

Applicant is a 43-year-old senior software engineer who is employed by a defense contractor. She is recognized by her employer for her dependability and work ethic. Applicant is seeking a security clearance.

Applicant was born in the People's Republic of China (PRC or China). She married her husband in 1985. Their daughter was born in 1988.

In 1989, Applicant came to the United States to join her husband and pursue her graduate studies. Applicant left their daughter in China in the care of her mother. In 1992, Applicant's daughter came to the United States to join her parents.

Applicant returned to China three times between 1995 and 1997. In 1995, she went to visit her mother, who was ill. Prior to the end of that year, Applicant returned to China after learning her mother had contracted cancer. In 1997, Applicant went to China to attend her mother's funeral. Applicant's daughter accompanied her during one of the 1995 trips.

Applicant's father is a citizen and resident of China, as are her four brothers. Applicant's father is a retired elementary school teacher. He is 80 years old and in poor health. Because he has no phone and a hearing problem, Applicant does not talk to him.

Applicant has four brothers who are citizens and residents of China. Her oldest brother is retired and lives in a small village. The next oldest is a shop assistant in a rural convenience store. Applicant's third brother is an architect in a small town. Her youngest brother is an accountant in a factory. She is closest to him. Applicant checks on her father by calling her youngest brother.

Applicant's husband returned to China for a visit after his father passed away in 1997.

Applicant and her husband became naturalized U.S. citizens in 1999. Applicant's minor daughter became a U.S. citizen at the same time that Applicant and her husband became U.S. citizens.

Applicant's husband and their daughter returned to China in 2000 to visit his mother, who was in poor health.

In addition to her visit with her mother in 1995 and with her father in 2000, Applicant's daughter returned to China for a visit in 2001. Applicant applied for her daughter's visa through the Chinese Embassy. Since a minor cannot travel alone, her daughter went with someone Applicant found at the airport. During her last visit to China, Applicant's daughter stayed with Applicant's father and Applicant's youngest brother.

Applicant's mother-in-law passed away in 2002. Her husband returned to China at that time.

The PRC does not recognize dual nationality.⁽³⁾

The PRC engages in human rights violations against its own citizens that include "arbitrary arrest and detention, torture and other cruel punishment, and other arbitrary official interferences with individual privacy and liberty."⁽⁴⁾

The PRC engages in an extensive espionage effort that primarily targets the United States.⁽⁵⁾

POLICIES

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guideline is applicable to this case:

Guideline B: Foreign Influence

A security risk may exist when an individual's immediate family, including co-habitants, 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.

Conditions that could raise a security concern and may be disqualifying include 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 (Disqualifying Condition 1).

They also include E2.A2.1.2.6, conduct which may make the individual vulnerable to coercion, exploitation, or pressure by a foreign government. (Disqualifying Condition 6).

Conditions that could mitigate security concerns include E2.A2.1.3.1, a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters) co-habitant, 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 (Mitigating Condition 1).

CONCLUSIONS

Although Applicant's daughter was a Chinese citizen when she came to the United States in 1992, she became a U.S. citizen at the same time Applicant became a naturalized U.S. citizen in 1999. Pursuant to 8 U.S.C. 1431, Applicant's daughter achieved U.S. citizenship by virtue of her parents' acquisition of citizenship and her status as a minor, living with her parents in the United States. Therefore, the Government has failed to establish a foreign influence disqualifying condition through the citizenship of Applicant's daughter (SOR ¶ 1.b). Based on the evidence of record, Department Counsel concurred with this conclusion. [\(6\)](#)

The fact that Applicant's father and four brothers are citizens and residents of the PRC raises Disqualifying Condition 1 (SOR ¶ 1.a). Applicant maintains that she has no contact with her father or brothers except for her youngest brother. She testified that her contact with him is limited to three or four calls a year. Applicant suggests this establishes Mitigating Condition 3 with regard to her immediate family members living in China..

The DOHA Appeal Board has held evidence that an applicant has contacts with an immediate family member in a foreign country raises a rebuttable presumption that those contacts are not casual in nature. The applicant then has the burden of presenting evidence to refute or rebut the government's case against the applicant, or extenuate or mitigate the facts and circumstances of the applicant's case that have been admitted or proven. ISCR Case No. 00-0484 (February 1, 2002) at p. 4. Rather than dispelling that presumption, the evidence of record establishes that Applicant's relations with her immediate family members in China are not casual. Though Applicant's calls to her brother may be limited, they reflect her concern for her father. Moreover, Applicant has permitted her daughter to travel alone to China to visit her father and brother. In fact, Applicant, her husband, and daughter have made a combined total of seven trips to China in the last nine years to visit relatives. This is not indicative of casual contact.

Applicant also contends that the record establishes that "none of her relatives are in a position to be exploited by the Chinese authorities to coerce her in any way." Applicant points out her father has long been retired, is in his eighties,

and has poor health. Although such facts may suggest to her that her father is not subject to being exploited, they could also make him more vulnerable to exploitation.

Applicant also points out: her eldest brother is retired and lives in a remote area; the next oldest is a shop assistant in a rural area who will retire soon; and her other two brothers have common jobs and live in a small town. Such facts may suggest to Applicant that her brothers enjoy anonymity and will not come within the scope of Chinese authorities. However, they are not sufficient to carry Applicant's burden of demonstrating that her relatives are not in a position to be exploited, given the history of the PRC in subjugating its own citizens and zealously pursuing an espionage program against the United States and other countries of the Western world.

The numerous trips to China by Applicant and other members of her family contribute to the risk (SOR ¶ 1.c). These trips expose Applicant and other members of her family directly to coercion, exploitation, or pressure by the PRC. This is especially the case for her minor daughter, who was a Chinese citizen by birth and whose acquisition of U.S. citizenship did not involve an affirmative act on her part. In addition, these trips tend to counteract the anonymity Applicant suggests her relatives in China enjoy and places them at greater risk of exploitation. This raises Disqualifying Condition 6.

Applicant suggests her trips to China are in her past. Applicant has not traveled to China since she attended her mother's funeral in 1997. She also testified she has no plans to return. However, when asked whether she might return if her father or one of her brothers became ill, Applicant stated: "May or may not (sic). I don't know."⁽⁷⁾ This leaves doubt as to whether Applicant may return to China. In accordance with E2.2.2 of the Directive, such doubt must be resolved in favor of national security.

Applicant is a highly respected employee who is recognized for her work ethic. Although there is no basis in the record to question Applicant's character and integrity, the DOHA Appeal Board has recognized that "an applicant with good character and personal integrity can pose a security risk because the applicant has close relatives in a country hostile to the United States." ISCR Case No. 01-26893 at p. 8. Family ties to relatives in a country hostile to the United States, such as the PRC, places a heavy burden on an applicant to show that those ties do not pose a security risk. *Id* at p. 7. Base on the record, Applicant has failed to carry that burden. I find against Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: Against Applicant

DECISION

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.

2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.

3. Govt Ex 3.

4. Govt Ex 4 at 8.

5. Govt Ex 5.

6. Tr 63.

7. Tr 61.