

DATE: February 3, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08153

## **DECISION OF ADMINISTRATIVE JUDGE**

**CAROL G. RICCIARDELLO**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 44-year-old engineer who works for a federal contractor. Applicant came to the U.S. in 1981 on a student visa from the People's Republic of China (China). He completed two college degrees and became a naturalized citizen in 1995. Applicant's wife, parents, and parents-in-law are all citizens of China. His parents-in-law reside in China. Applicant stays in contact with his in-laws on a regular basis. His parents are currently residing with Applicant. Applicant has failed to mitigate the security concerns raised by foreign influence considerations. Clearance is denied.

### **STATEMENT OF THE CASE**

On February 25, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. <sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline B, foreign influence considerations.

In a sworn statement, dated March 16, 2004, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. In his SOR response, Applicant admitted all the allegation contained in the SOR. Department Counsel submitted the government's case on September 21, 2004. A complete copy of the file of relevant material (FORM) was received by Applicant on October 15, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional information in the allotted time. The case was assigned to me on November 30, 2004. Applicant contacted me telephonically on January 18, 2005, and requested he be permitted to provide documents beyond the deadline. I contacted Department Counsel, who did not object to Applicant submitting material, however he reserved the right to object after reviewing the material. Applicant provided two documents, one was a letter from him and the other was a character letter. Department Counsel did not object and the documents were marked as Item 7 and 8, and included in the record for consideration.

### **FINDINGS OF FACT**

Applicant is a 44-year-old electrical engineer who is employed by a federal contractor. Applicant came to the U.S. from China in 1981. He attended several schools, studying English and then engineering. Applicant received a bachelor's degree and a master's degree in engineering. Applicant became a naturalized U.S. citizen in 1995. Applicant recently married and has one child. Applicant's wife and mother are citizens of China and resident aliens of the U.S. Applicant's father is a citizen of China. He recently moved from China to the U.S. and holds a government green card. Applicant's mother was a medical doctor and his father was a mechanical engineer in China. Both are retired. No information was provided regarding whether they receive a pension, and if so from what source. Applicant's mother intends to apply for U.S. citizenship. Applicant's mother-in-law and father-in-law are both residents and citizens of China. Applicant maintains weekly telephonic contact with his in-laws, usually speaking to them when his wife calls them.

Applicant returned to China on pleasure trips in 1997, 1999, and 2001. Applicant only travels on his U.S. passport. Applicant's wife is a part-time bookkeeper/accountant. His in-laws occupations were not provided. Applicant has additional extended family living in China, and he has limited contact with them.

Applicant professes his loyalty to the U.S. He does not own property in China, has no military obligation and does not participate in any Chinese organizations. Applicant's co-worker attests to Applicant's honesty, integrity and dependability.

### POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline B, pertaining to foreign influence, with its respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.<sup>(2)</sup> The government has the burden of proving controverted facts.<sup>(3)</sup> The burden of proof is something less than a preponderance of evidence.<sup>(4)</sup> Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(5)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(6)</sup>

No one has a right to a security clearance<sup>(7)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(8)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(9)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(10)</sup> 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.

### CONCLUSION

Under Guideline B, 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 interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure." [\(11\)](#)

China is an authoritarian state whose power is centralized in the Chinese Communist Party. [\(12\)](#) China historically has a poor human rights record and its citizens lack freedom to peacefully express opposition to the political system or to freely change those in charge of the government. [\(13\)](#) The Government is responsible for committing numerous and serious abuses of human rights. [\(14\)](#) Those seeking to discuss change or who express dissenting political views are subject to arrest and harassment. [\(15\)](#) China does not have an independent judiciary nor are their citizens afforded due process rights. [\(16\)](#)

China does not recognize dual citizens and U.S. born children of Chinese nationals have had difficulty entering and exiting China on U.S. passports. [\(17\)](#) This becomes a serious issue during a child custody dispute and the ability of dual national children to depart China could be affected. [\(18\)](#) U.S. citizen children of Chinese citizens are issued special travel permits, which essentially are one-way permits that allow entry into China, but do not permit the holder to depart. [\(19\)](#) These persons holding the permits are regarded as Chinese citizens and subject to all Chinese laws. [\(20\)](#)

Based on the allegations in the SOR, DC 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*, must be evaluated in determining whether it is clearly consistent with the national interest to grant a security clearance to Applicant under Guideline B. In this case, DC 1 applies because Applicant's wife, parents, and parents-in-law are all citizens of China. Applicant's parents-in-law are also residents of China.

I have considered all the potentially mitigating conditions under Guideline B in this case. I specifically considered MC 1: *A determination that the immediate family members(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associates(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*, and conclude it does not apply. No information was provided to show whether Applicant's family has any ties or not with the government. No information was provided to show what Applicant's in-laws occupations are and whom they are employed by. Even if all of Applicant's family are not agents of a foreign power, each one is still a citizen of China and subject to its laws.

I have also specifically considered MC 3: *Contact and correspondence with foreign citizens are casual and infrequent*, and conclude it does not apply. Obviously, Applicant maintains close contact with his wife and his parents who live with him. He also speaks on a regular basis with his in-laws. Applicant has returned to China several times for pleasure visits. The status of Applicant's child, if he chooses to return to China again, could be in jeopardy in how the Chinese government determines his nationality.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence in this case, and the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant's entire family are Chinese citizens. All are free to return to China to live. With the limited information provided, the close contact Applicant has with his relatives creates a position of vulnerability for him. This vulnerability could be exploited by the authoritarian Chinese government, in a way that could force Applicant to choose between his loyalty to his wife, parents and parents-in-law and his loyalty to the U.S. When considering the whole person, I find Applicant has failed to mitigate the security concerns. I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security

clearance. Accordingly, Guideline B is decided against Applicant.

### **FORMAL FINDINGS**

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

#### 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

### **DECISION**

In light of all the circumstances as 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.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

4. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

5. ISCR Case No. 94-1075 (August 10, 1995) at pp.3-4; Directive, Enclosure 3, ¶ E3.1.15.

6. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15

7. *Egan*, 484 U.S. at 531.

8. *Id.*

9. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

10. Executive Order 10865 § 7.

11. Directive, ¶ E2.A2.1.1.

12. Item 6 U.S. Dept. of State, *China, Country Reports on Human Rights Practices 2003*, p. 1 (February 25, 2004).

13. Item 6, *supra*.

14. Item 6, *supra*.

15. Item 6, supra.

16. Item 6 supra at 2.

17. Item 5 Dept. of State, *Bureau of Consular Affairs Information Sheet, China*, p.2 (July 1, 2004).

18. Item 5 supra.

19. Item 5 supra.

20. Item 5 supra.