

DATE: July 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09027

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

Eric Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is potentially subject to foreign influence because his mother and sister are citizens and residents of the People's Republic of China (PRC), where he traveled to the PRC in 1998, 2000, and 2001, and is likely to travel to the PRC in the future. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 4 May 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence concerns. ⁽¹⁾ He answered the SOR on 14 May 2004 and requested a hearing. DOHA assigned the case to me on 13 July 2004 and I convened a hearing on 18 August 2004. DOHA received the transcript (Tr.) on 27 August 2004.

FINDINGS OF FACT

Applicant admitted the Guideline B allegations of the SOR, except for 1.d.; ⁽²⁾ accordingly, I incorporate those admissions as findings of fact. Applicant, a 42-year-old information specialist for a defense contractor since March 2000, seeks access to classified information. He has not previously applied for a clearance.

Applicant was born in the People's Republic of China (PRC) in 1961. He grew up in the PRC was educated there, obtaining both his undergraduate and masters degrees. Indeed, he applied to graduate school to leave the factory work he had been assigned by the government when he graduated from college.

Applicant immigrated to the U.S. in 1989 to pursue his doctorate in mechanical engineering, which he obtained in 1994. In 1991, Applicant and his fiance--a PRC national he met in the U.S.--returned to the PRC to marry. They later separated and divorced in 1995. They had one child, born in the U.S. The ex-wife later became a naturalized U.S.

citizen. Applicant remarried in January 1999. His second wife was also a PRC national living in the U.S. They have one child, born in the U.S. Applicant became a naturalized U.S. citizen in October 1999, and obtained a U.S. passport the same month; his wife was naturalized in June 2000.

Applicant's mother and sister are citizens and residents of the PRC. His father died in 2000. His mother is a retired kindergarten teacher; his sister is mentally handicapped and has never worked. His mother receives a government pension of approximately \$250.00 per month; his sister receives a monthly stipend of approximately \$2.50.

Applicant traveled to the PRC in 1998 to visit his ill father, in 2000 to attend his father's funeral, and in 2001 to commemorate the anniversary of his father's death. He has regular contact with his mother by telephone to see how she and his sister are doing. He acknowledges he would likely return to the PRC to attend her funeral. Presumably he would return if she fell ill. .

The PRC is a repressive, totalitarian government with foreign policy goals antithetical to the U.S. It has an active, effective intelligence service that targets U.S. intelligence and economic information, and operates against its citizens in the U.S. The PRC does not recognize dual citizenship of its citizens who become naturalized U.S. citizens.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Burden of Proof

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

CONCLUSIONS

The government established its case under Guideline B and the Applicant failed to mitigate the case against him, except regarding his ex-wife and his wife's brother. His ex-wife is a U.S. citizen residing in the U.S. Given the status of their relationship, it is difficult to envision Applicant being influenced in any way. In similar fashion, Applicant has no contact with his brother-in-law residing in the PRC, making it unlikely the PRC could use him to pressure Applicant. I resolve subparagraphs 1.c. and 1.d. for Applicant.

Applicant's mother and sister present a different issue, however. Applicant maintains regular contact with them. He would almost certainly travel to the PRC if his mother fell ill, or in the event of her death--just as he did with his father--and would likely do so to make arrangements for his sister's care. The PRC is hostile to U.S. interests and conducts active intelligence operations against the U.S. The PRC is known to target its citizens residing abroad--regardless of their claimed citizenship--for purposes of obtaining sensitive information. Given the regularity of his contacts with family in the PRC, Applicant has a heavy burden to establish that his family members are not otherwise in a position to be exploited. His evidence fails to overcome the government's security concerns. I resolve Guideline B against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline B: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: Against the Applicant

DECISION

In light of all 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 denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992--amended by Change 3 dated 16 February 1996 and by Change 4 dated 20 April 1999 (Directive).
2. Which he denied based on his current information that his ex-wife has become a U.S. citizen.