

DATE: May 31, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-09053

## **DECISION OF ADMINISTRATIVE JUDGE**

**PAUL J. MASON**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Jennifer I. Campbell, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The potential for foreign influence has been mitigated by the fact that Appellant's two immediate family members are not agents of a foreign power nor are they in a position to be exploited in a way that would require Applicant to have to choose between the family member and the United States (U.S.) In addition, Applicant's sponsorship of his mother for two years does not make him an unacceptable security risk as there have been no efforts by Peoples Republic of China (PRC) government to influence him through his mother or sister by coercive or non-coercive means. Clearance is granted.

### **STATEMENT OF CASE**

On April 26, 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, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons 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 determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on May 20, 2004. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on July 1, 2004. Applicant received the FORM on July 12, 2004. His response to the FORM was due by August 13, 2004. No response was received. The case was assigned to me on August 23, 2004.

### **FINDINGS OF FACT**

The SOR alleges foreign influence under Guideline B. Applicant admitted all the factual allegations. Applicant is 40 years old and has been employed as a senior scientist by a defense contractor since December 1995. He seeks a secret security clearance.

Applicant's 67-year-old mother is a resident citizen of the People's Republic of China (PRC). He contacts her about twice a week. Applicant contacts his 30-year-old sister, a resident citizen of PRC, every other week. On March 27, 2003, Applicant was sponsoring his mother for entry into the United States (U.S.) Applicant traveled to the PRC in 1994, in 1997, 2001, and twice in 2002 and 2003.

According to Item 4 of the FORM, Applicant was born in the PRC in March 1964. Based on Item 5, Applicant was awarded a full scholarship from a Chinese foundation to attend a U.S. university in 1986. He came to the U.S. on a student visa. After graduating from a U.S. university in 1991 with a PhD, he decided to stay and work in the U.S. He became a U.S. citizen in October 1999.

Applicant has no cultural ties with any foreign government. He has no financial obligations to any foreign country and no financial interests in a foreign country. Applicant could not be subjected to coercion by any foreign government. He has not been approached by any suspicious people and if so, would report such activities to the Federal Bureau of Investigation (FBI). When Applicant made his previously mentioned visits to the PRC, he financed the trips and stayed at his mother's home.

Applicant talks to his mother twice a week and visits her once a year because of her age and because his father is deceased. Applicant's mother owns a small business measuring instruments for construction companies. Applicant does not provide financial assistance to his mother, and she has no ties to the PRC government. Applicant's sister is an accountant and receives a telephone call from him every other week. He visits her once a year.

Applicant has no other family or friends that are residing in a foreign country and no other family or friends residing in the U.S. that are U.S. citizens. None of Applicant's relatives have ever been threatened in an effort to have Applicant cooperate with the foreign service. Applicant has never been threatened because his relatives, friends or contacts live in a foreign country.

### POLICIES

As set forth in the Directive, every personnel security decision must reflect fairness, impartiality, and commonsense. The decision must be based on all available information, both favorable and unfavorable, the guidelines and the whole person concept.

#### Burden of Proof

The government has the burden of proving controverted facts. After the government meets its burden, an applicant has the ultimate burden of presenting evidence in refutation, extenuation, or mitigation that demonstrates it is clearly consistent with the national interest to grant or continue his security clearance. Any doubt concerning an applicant's security clearance access should be resolved in favor of national security. *Department of the Navy v. Egan*, 484 U.S. 518, at 531.

#### Foreign Influence (Guideline B)

Security concerns may exist when an individual's family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the U.S. or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information.

### CONCLUSIONS

The facts and circumstances of this case involving two family members and travel to the PRC invoke disqualifying condition (DC) 1, E2.A21.2.1. (*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*). The security concerns raised by foreign influence must also consider the foreign country involved. While the PRC, an authoritarian Communist government, still engages in espionage activities in the U.S. and other foreign countries, and also has a poor record of occasional mistreatment of its own citizens, the country is trying to develop a free enterprise system and make positive

changes in other areas of its political structure. Considering the familial contacts, travel to the PRC seven times in 10 years, and the politics and ideology of the country, the Government has established a case under the foreign influence guideline.

Having weighed and balanced the entire record, I find Applicant has mitigated his case under mitigating condition (MC) 1, E2.A2.1.3.1. (*a determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, 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 U.S.*). Applicant's mother and sister are resident citizens of the PRC. The potential for foreign influence is reduced significantly because his mother is 67 years old and he provides her no financial support. Although she owns a small business providing measurements to construction companies, the business is not connected to the government of the PRC. Applicant provides his 30-year-old sister (an accountant) with no financial support. Finally, the sister is not connected to the PRC government.

Though Applicant's contacts with his mother and his sister cannot be considered casual and infrequent because of the closeness Appellant has with them, there has been no instance of any efforts by the PRC government to capitalize on the residence and citizenship of Applicant's mother and sister or Applicant's employment or security clearance status. When asked whether his relatives had ever been threatened by a foreign government, he replied in the negative. He noted that his foreign relatives could not adversely affect his willingness to protect classified information. He also stated unequivocally he would notify the FBI should any suspicious person or organization approach him. While Applicant has not actually confronted actual circumstances similar to the hypothetical scenarios presented to him by the investigator, his responses are considered believable.

Applicant admitted in March 2003, and again in May 2004 in his answer to the SOR, he was sponsoring his mother for entry in the U.S. Though the Appeal Board has held that the security concerns raised by foreign influence are not mitigated by a relative's desire to emigrate to the U.S., ISCR Case No. 01-20908, (App. Bd. Nov. 26, 2003), Applicant's potential for vulnerability to foreign influence has not increased simply because he has utilized the most successful means of preparing a loved one for entry into the U.S. Considering the entire record and the whole person concept Appellant has established his case in mitigation under MC 1 by successfully demonstrating his immediate family members are not in a position to be exploited in a way that will cause Applicant to choose between the family member and the U.S.

### **FORMAL FINDINGS**

Paragraph 1 (foreign influence, Guideline B): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge