

DATE: October 19, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-09445

**ECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

Matthew S. Freedus, Esq.

**SYNOPSIS**

Once the Government proved that applicant's immediate family members in the People's Republic of China (PRC) raise serious and significant security concerns, the burden shifted to applicant to rebut these concerns. Applicant, although an honorable man who has contributed to the United States defense industry for many years, did not meet his burden. Clearance is denied.

**STATEMENT OF THE CASE**

On March 23, 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, issued a Statement of Reasons (SOR) to applicant which 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 responded to the SOR in writing on May 21, 2004. The case was assigned to me on July 22, 2004. A Notice of Hearing was issued on August 17, 2004, and the hearing was held on September 8, 2004. The transcript was received on September 22, 2004.

**FINDINGS OF FACT**

Applicant is 46 years of age. He has been employed by the same defense contractor since 1995.

Applicant was born, raised, and for the most part educated, [\(1\)](#) in the PRC. After receiving his M.S. degree, he attended one year of a three year Ph.D. program in a third country. In 1988, he moved to the United States to continue his education. He eventually received his Ph.D. from a United States university. Although he lived in the United States since 1988, he did not apply to become a United States citizen until 2000. Applicant waited so long to apply for United

States citizenship because when he first came here he intended to get his education and then return to the PRC. However, according to applicant, two factors emerged that changed his mind. First, one of his best friends was killed during the Tiananmen Square demonstrations, which caused him to begin to compare the two governments and the freedom they offered their citizens. Second, the longer he stayed the more he "loved this country" (TR at 61-65). He became a United States citizen in 2001.

Applicant and his wife were married in the PRC in 1985. She has also lived in the United States continuously since 1988, but only recently applied for United States citizenship. She is a part-time editor of a Chinese literary magazine published in Hong Kong. Applicant's teenage son was born in the PRC. He moved to the United States when he was four years of age. He became a United States citizen in 2002 (Exhibit 2). The son lives with his parents in the United States. Applicant, his wife, and his son all plan on remaining in the United States.

Applicant's father<sup>(2)</sup> and one of applicant's siblings are citizens and residents of the PRC. His father is retired and his sibling is a professor. According to applicant, neither had or has direct ties to the PRC government. Applicant talks with his father monthly. He talks with his sibling "maybe twice a year or something" (TR at 90).

Applicant's other sibling resides in the United States, is married to an American, and has applied to become a United States citizen (TR 75).

Applicant's 82 year old mother-in-law is a citizen and resident of the PRC.

Applicant traveled to the PRC six times between 1996 and 2003. Most of these trips were to visit his ailing mother. During his trip in the summer of 2002, he used his United States passport for the first time. When the PRC officials typed his name into their computer they were able to identify him as a former PRC citizen. His last visit to the PRC, in 2003, was to attend his mother's funeral.

Applicant is considered a national, if not an international expert in his field. He has published 17 papers in his field.

Applicant's supervisor testified that he has a very high opinion of applicant's reliability, honesty, truthfulness and integrity, and would recommend applicant for a position of trust "without reservation." He has no reason to question applicant's loyalty to the United States (TR at 39-41, 46).

Applicant's second level supervisor also testified on applicant's behalf. He testified that he has known applicant since 2001 and since then has had weekly interaction with him. He further testified that applicant "is, without question, one of the most honest individuals that [he has] bumped into," that he has no reason to question applicant's loyalty to the United States, and that he would recommend him for a position of trust (TR at 53).

## CONCLUSIONS

In this case, the evidence establishes that applicant's wife is a resident of the United States, but a citizen of the PRC; his father and one sibling are citizens and residents of the PRC; and one sibling is a resident of the United States, but a citizen of the PRC. These facts, standing alone, require application of Guideline B Disqualifying Condition E2.A2.1.2.1 (*an immediate family member . . . is a citizen of, or resident or present in, a foreign country*).

Once the Government established the applicability of Disqualifying Condition E2.A2.1.2.1, the burden shifted to applicant to establish that Mitigating Condition E2.A2.1.3.1 (*a determination that the immediate family member is not an agent 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*) is applicable. Applicant failed to meet his burden. Although I conclude there is no credible evidence that applicant's immediate family members are agents of the PRC, the evidence does not establish that applicant's immediate family members are not in a position to be exploited by the PRC in a way that could force applicant to choose between loyalty to the United States and loyalty to his immediate family members. The PRC is an authoritarian state in which the Chinese Communist Party is the paramount source of power (Exhibit 3). It is a well known fact that the country has an active espionage program aimed at the United States. This fact, together with its appalling human rights record, leaves me unable to conclude that the PRC would not pressure, coerce or exploit applicant's immediate family members if it felt it necessary to obtain classified information

from applicant. Applicant's testimony that he wouldn't

disclose classified information if his family in the PRC, or anyone else, asked him to do so was sincere; (3) however, it cannot be given much weight. (4)

Applicant is an honorable man and an excellent scientist who has actively participated in and advanced the United States defense effort. However, under the applicable guidelines, his clearance request must be denied.

### **FORMAL FINDINGS**

#### **GUIDELINE B: AGAINST THE APPLICANT**

All subparagraphs found against 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.

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Joseph Testan

Administrative Judge

1. Applicant received B.S. and M.S. degrees from a PRC university.
2. Applicant's mother passed away in 2003.
3. TR at 79.
4. *See*, ISCR Case No. 00-0484 (February 1, 2002) at page 6.