

KEYWORD: Foreign Influence

DIGEST: Applicant, a native of the People's Republic of China (PRC), came to the U.S. for graduate study in 1995. In 1997, she married a fellow graduate student, a U.S. native. Since becoming a U.S. citizen in August 2001, she has traveled three times to the PRC, most recently in September 2004 when her grandfather was gravely ill. Applicant's mother is a PRC citizen and U.S. permanent resident who has resided in the U.S. since about 1999. While Applicant's brother and grandmother are PRC resident citizens, Applicant does not have such a close bond with them that she is likely to jeopardize U.S. interests. Clearance is granted.

CASENO: 03-11123.h1

DATE: 08/05/2005

DATE: August 5, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-11123

**DECISION OF ADMINISTRATIVE JUDGE**

**ELIZABETH M. MATCHINSKI**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a native of the People's Republic of China (PRC), came to the U.S. for graduate study in 1995. In 1997, she married a fellow graduate student, a U.S. native. Since becoming a U.S. citizen in August 2001, she has traveled three times to the PRC, most recently in September 2004 when her grandfather was gravely ill. Applicant's mother is a PRC citizen and U.S. permanent resident who has resided in the U.S. since about 1999. While Applicant's brother and grandmother are PRC resident citizens, Applicant does not have such a close bond with them that she is likely to jeopardize U.S. interests. Clearance is granted.

**STATEMENT OF THE CASE**

On August 11, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the 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 the Applicant. <sup>(1)</sup> DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on foreign influence (Guideline B).

On August 26, 2004, Applicant responded to the SOR, and requested a hearing before a DOHA Administrative Judge. The case was assigned to me on December 17, 2004. Pursuant to formal notice issued on January 27, 2005, I convened a hearing on March 1, 2005.

At the hearing, one government exhibit and 10 Applicant exhibits were admitted. Testimony was taken from Applicant, her spouse, and her project manager at work, as reflected in a transcript received on March 11, 2005. At the government's request, administrative notice was also taken of excerpts of the *Operations Security Intelligence Threat*

*Handbook*, as revised May 1996, and two publications of the U.S. State Department, *Background Note: China*, dated October 2004, and *Country Reports on Human Rights Practices-2003 for China*, including Tibet, Hong Kong, and Macau, dated February 25, 2004.

## FINDINGS OF FACT

DOHA alleged foreign influence concerns related to the PRC citizenship of Applicant's mother, with whom she was said to reside; the PRC residency and citizenship of her brother and her grandparents; and her travel to the PRC in at least March 1998 and September 2000. In her August 2004 response to the SOR, Applicant acknowledged her mother is a PRC citizen and U.S. permanent resident, but her mother was residing in her own apartment in the U.S. Applicant also admitted the PRC citizenship and residency of her grandparents and brother, with whom she corresponded only on special occasions, such as family birthdays or holidays. Applicant explained her travels to the PRC to see family members predated her employment with the defense contractor, and she understood her responsibility to promptly report any foreign contacts, requests, or threats. Applicant's admissions are incorporated as findings of fact. Additional findings are as follows:

Applicant is a 34-year-old naturalized U.S. citizen employed as member of the technical staff of a university-affiliated research and development laboratory since November 2001. Applicant held an interim secret-level security clearance for her duties until it was withdrawn in late August 2004 on issuance of the SOR.

Applicant was born in the PRC in 1971 to well-educated PRC native citizens. Her father taught physics at a university in the PRC, and her mother worked as a civil engineer. Applicant has a brother who is two years younger than she is.

After earning her bachelor's degree from a PRC university, Applicant came to the U.S. on a student visa in August 1995 to pursue graduate studies in bioengineering. Applicant became romantically involved with a fellow graduate student, a native-born U.S. citizen, and they married in the U.S. in August 1997.

In March 1998, Applicant traveled to the PRC to see her ailing father, who died the following year. Shortly after her return to the U.S., she was awarded her master of science degree in bioengineering in May 1998. In August 1998, Applicant and her spouse had the first of their two sons. She stayed at home to care for their child until April 1999, when the family moved to their present area and she took a job as a researcher.

Applicant's mother, who had retired in about 1997, came to the U.S. to see her grandson and to meet Applicant's spouse in 1999. She enjoyed it so much that she moved in with Applicant and her spouse. She gave her residence in the PRC to Applicant's brother.

In September 2000, around the one-year anniversary of her father's death, Applicant traveled to the PRC to visit her family members. After her return to the U.S., she worked for one year as a software engineer for a local visualization technology company before being hired by her present employer.

In August 2001, Applicant became a naturalized U.S. citizen, taking an oath to renounce all foreign allegiances, to support and defend the U.S. Constitution and its laws, and to bear arms or noncombatant service or civilian service on behalf of the U.S. if required. She also took on a new English-sounding first name to be consistent with her married surname and her new nationality. Her acquisition of U.S. citizenship served to revoke her PRC citizenship.<sup>(2)</sup> In late September 2001, she was issued her U.S. passport.

In November 2001, Applicant was hired as a member of the technical staff by a university-affiliated research laboratory. Needing a secret-level security clearance for her duties with this defense contractor, Applicant executed a security clearance application on December 10, 2001. Applicant disclosed her birth and residency until August 1995 in the PRC, her possession of a PRC passport before her U.S. naturalization, and her pleasure travel to the PRC in March 1998 and September 2000. She also reported her mother's PRC citizenship and status as a registered alien in the U.S. residing with her and her spouse. Applicant was granted an interim secret clearance for her duties.

In summer 2003, Applicant and her spouse had their second child, who is cared for during the day by Applicant's mother. She had been granted U.S. permanent residence in 2002. By August 2004, Applicant's mother had moved into her own apartment in the U.S. She had learned enough English to feel comfortable living on her own. Applicant and her spouse are the primary sources of her financial support. She has minimal savings in the PRC to draw on, about a few thousand dollars. Applicant's mother plans on applying for U.S. naturalization as soon as she is eligible.

In August 2004, an SOR was issued to Applicant informing her, in part, that her travel to the PRC raised foreign influence concerns. Applicant went to the PRC for 11 days in September 2004 to see her grandfather who was gravely ill. Her mother and toddler son accompanied her, but her spouse remained in the U.S. with their school-age son. Applicant stayed at her grandparents' home when she was in the PRC, spending most of her time at the hospital visiting her grandfather. Applicant saw her brother during her stay in the PRC. Applicant notified her employer's security office of her intent to travel to the PRC, and she booked her travel only after security officials approved her trip. After she returned to the U.S., her grandfather slipped into a coma and he died in February 2005.

As of March 2005, Applicant's brother was employed as an architect and interior designer for a private firm in the PRC. A graduate of an architecture technology university in the PRC, he is not a member of the communist party nor affiliated with any government controlled agencies or businesses. Applicant's contact with him is usually limited to the exchange of cards on holidays and family birthdays, about three or four times a year. They had one or two telephone conversations in 2005, around the time of their grandfather's death, but there have been years where they did not

converse. He married in about early 2004 in the PRC. His spouse is employed as an assistant in a physician's office in the PRC. Neither Applicant nor her mother attended his wedding. Applicant was not invited. Applicant's spouse, who has never been to the PRC, has not met her brother.

Applicant's grandmother is 88-years-old and living in the PRC. She has never worked outside of the home and her daily activities are limited to the vicinity of her residence. She has suffered significant hearing loss which makes conversation difficult. Applicant has ongoing contact with her grandmother, but it is limited to sending a birthday card and occasionally pictures of her two sons.

Since her marriage, Applicant has been committed to her life in the U.S. Years ago, she asked her family in the PRC to remove her name from the family in the national census record. Her social circle consists of her husband's family, with whom she has developed bonds of affection, of mutual friends, coworkers, and neighbors. Applicant volunteers at the local public school that her older son attends, and she does not belong to any Chinese groups or organizations in the U.S. English is the primary language in their home. Applicant has voted in the U.S. She has no financial interests in the PRC while she has about \$115,000 in 401k/IRA assets in the U.S.

Applicant is held in high regard by her project manager and coworkers. She has proven to be a thorough, conscientious, and valuable contributor for the defense contractor. Currently working on a project involving the development of radar imaging and assessment technology, Applicant requires a secret clearance to work on classified data. She handled classified information appropriately when she held an interim secret clearance, complying fully with security practices and procedures. She has been briefed by company security officials about the collection techniques and methods of the Chinese government. Should undue foreign influence be placed on her family members, Applicant intends to report any such contacts, requests or threats to her employer's security officials.

## **POLICIES**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

## CONCLUSIONS

**Foreign Influence.** 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 interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Guideline B, foreign influence, concerns are raised in this case where Applicant's mother is a citizen of the PRC, albeit a permanent resident of the U.S. living here, and Applicant's brother and grandmother are resident citizens of the PRC. In determining whether an applicant's foreign connections pose an unacceptable security risk, the administrative judge must consider the record evidence as a whole. Common sense suggests that the stronger the ties of affection or obligation, the more vulnerable a person is to being manipulated if the relative, cohabitant, or close associate is improperly influenced, brought under control, or even used as a hostage by a foreign intelligence or security service. Applicant understandably has a close relationship with her mother, who lived with her and her spouse until she felt comfortable enough with her English to move into her own place. Her mother was caring for her 20-month-old son during the day as of March 2005. Applicant does not have frequent contact with her grandmother or brother who reside in the PRC, as it is limited for the most part to the exchange of cards on birthdays and/or holidays. Yet, Applicant also traveled to the PRC with her mother in September 2004 when her grandfather was in the hospital. She stayed at her grandparents' home when in the PRC, and also visited with her brother. While the bonds she shares with her grandmother and brother are not as strong as those with her mother or even with her spouse's family in the U.S., they are more than casual ties. Disqualifying condition (DC) 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*, applies in determining whether it is clearly consistent with the national interest to grant Applicant access to classified information.

These foreign influence concerns may be mitigated where it can be determined that the relatives 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 (*see* MC E2.A2.1.3.1.). None of Applicant's relatives are agents of a foreign power. Her mother retired eight years ago from her job as a civil engineer in the PRC and now lives in the U.S. Her brother works as an architect and interior designer for a private firm. Her grandmother never worked outside of the home.

The analysis does not end with a determination that Applicant's relatives are not agents of a foreign power, however. The risk of undue foreign influence must be evaluated in terms of the possible vulnerability to both coercive and non coercive means of influence being brought to bear on, or through them by the PRC, a country known to have significant intelligence operations against the U.S., (3) and a poor human rights record. (4) The risk of undue foreign influence is minimal in the case of Applicant's mother, who has clearly chosen to remain in the U.S. Her time is devoted to caring for her grandson and to learning English so that she can become naturalized and feel comfortable in her community in the U.S. Applicant's brother and grandmother present a somewhat higher risk where they are within the physical reach of PRC authorities and directly subject to PRC laws.

Applicant has credibly testified that in the event of any undue pressure or influence being brought to bear on a family member, she would immediately report the contacts to her employer's security officials. The DOHA Appeal Board has consistently held that a statement of intention about what an applicant will do in the future under some hypothetical set of circumstances is not entitled to much weight, unless there is record evidence that the applicant has acted in an identical or similar manner in the past under identical or similar circumstances. *See* ISCR Case No. 99-0511(December 19, 2000). While Applicant has not been tested in this regard, the strength of her ties to the U.S., her personal integrity, and her record of appropriate handling of classified information when she had access, persuade me that she can be counted on to fulfill her fiduciary responsibilities in the event of any undue foreign influence.

Since her marriage in 1997, Applicant has been committed to her life in the U.S. while her ties to the PRC have decreased significantly. She applied for U.S. citizenship as soon as she was eligible, knowing that it would revoke her PRC citizenship. On her naturalization, she took an English first name. English is the language spoken in her home with her school-age son, and she is not involved in any Chinese organizations in the U.S. She has developed personal bonds with her spouse's family that she does not share with her brother or even with her grandmother. She is not likely to jeopardize the safety of those closest to her, her American-born spouse and sons. Also weighing in her favor, Applicant understands her obligations to report any untoward contacts from foreign nationals, and she has been briefed by her employer about the PRC collection techniques. Before she traveled to the PRC in September 2004, she sought the approval of her employer's security officials before even booking her trip. Those who have had the opportunity to observe Applicant's work, dedication to her family, and commitment to the U.S. are of the opinion that she can be trusted. While there exists the theoretical possibility that the PRC could attempt to influence Applicant, she is not seen as vulnerable to such foreign influence. SOR ¶¶ 1.a., 1.b., 1.c., and 1.d., are resolved in her favor.

### **FORMAL FINDINGS**

Formal findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.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 or continue a security clearance for Applicant.

**Elizabeth M. Matchinski**

**Administrative Judge**

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. The PRC does not recognize dual citizenship. *See* U.S. State Department's *Consular Information Sheet-China*, dated January 15, 2005 (information current as of July 26, 2005).
3. *See* Operations Security Intelligence Threat Handbook, Section 3.
4. *See* the U.S. State Department's Country Reports on Human Rights Practices-2003 pertaining to China (PRC) including Tibet, Hong Kong, and Macau, released February 25, 2004, by the Bureau of Democracy, Human Rights, and Labor.