

DATE: March 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11139

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant emigrated from the People's Republic of China (PRC) in 1993 and became a citizen in 2000. Her mother, three siblings, an aunt, an uncle, and five cousins, are citizens of, and living in, the PRC. She is sponsoring her mother for entry to the U.S. She has occasional telephone contact with her siblings on birthdays or anniversaries. She has little contact with her other relatives and friends in the PRC. She has traveled to the PRC twice since emigrating to visit her father now deceased. Clearance is granted.

STATEMENT OF THE CASE

On November 18, 2004, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated November 30, 2004, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on January 14, 2005, and a Notice of Hearing was issued the same day for a hearing held on February 10, 2005. The Government introduced five exhibits at the hearing and the Applicant introduced three. All were accepted into evidence. The Applicant testified on her own behalf. The transcript was received on February 23, 2005.

FINDINGS OF FACT

Applicant admitted all of the factual allegations with explanatory information. Those admissions are incorporated herein as findings of fact.. After a complete review of the evidence in the record and upon due consideration of the record the

following additional findings of fact are made:

Applicant is a 38-year-old employee of a defense contractor working as a software engineer. She emigrated from the People's Republic of China (PRC) in September 1993. In 1992 she married her husband, who was a U.S. citizen at the time having been born in Indonesia. Applicant became a U.S. citizen in 2000.

Applicant's mother, three siblings, an aunt and uncle and five cousins, live in and are citizens of the PRC. She is sponsoring her widowed mother, who is 74 years of age, for entry to the U.S. She is awaiting a U.S. visa for entry. Applicant has occasional telephone contact with her siblings on birthdays or anniversaries but rarely has other contacts with them. One of her two sisters is a doctor working in a hospital which is run by the government. Her brother is a realtor and her other sister is a travel agent. She has little contact with her aunt and uncle, having seen them only twice in the past 12 years when she visited the PRC. None of her relatives work for or are agents of a foreign government.

Since coming to the U.S., Applicant has traveled to the PRC twice, once in 1999 before becoming a citizen to visit family, and again in 2003 to attend her father's funeral using her U.S. passport. She has tentative plans to go again in 2006, the third anniversary of her father's death, a significant time for Chinese families. She has no plans to travel there thereafter.

Applicant corresponds occasionally with two former classmates who are PRC residents and citizens. She has had no contact with them during the past year and their relationship has lessened with the passage of time.

Applicant and her husband have two children ages seven and ten who are in school. She and her husband own their home and have other assets in the U.S. and none abroad. She participates in community and school activities with her children. She is highly regarded both in her work and her private life by her company, supervisors, and friends. (Exhs. A, B, and C).

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential

for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

"A security risk may exist when an individual's immediate family 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." Directive, ¶ E2.A2.1.1. Having immediate family members who are citizens of, and residing in a foreign country, may raise a

disqualifying security concern. Directive, ¶ E2.A2.1.2.1.

CONCLUSION

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR:

The applicable guideline concerning foreign influence (Guideline B) provides as a disqualifying condition (DC) that a security risk may exist when an individual's family and foreign associates to whom she has close ties of affection or obligation are not citizens of the United States or may be subject to duress. (E2.A2.1.1.) Such facts could create the potential for foreign influence that could result in the compromise of classified information.

Conditions under Guideline B that could raise a security concern and may be disqualifying include an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident in a foreign country. (E2.A2.1.2.1.) Possible mitigating conditions (MC) that might be applicable are a determination that the family and associates 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 persons involved and the U.S. (E2.A2.1.3.1.), or that contact and correspondence with foreign citizens are casual and infrequent. (E2.A2.1.3.3.)

Based on the evidence of record, including Applicant's admissions, the Government established reasons to deny her a security clearance because of foreign influence. Having established such reasons, the Applicant had the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

Applicant is a sincere person who is doing an effective job for her company and is delighted to be an American citizen enjoying the benefits of citizenship for herself and her family. She has close ties of affection to her mother as illustrated by her efforts to bring her to the U.S. Her ties to her siblings are much less than to her mother and quite infrequent. Her ties with other more remote relatives and to her classmates are both casual and infrequent. Her travels to the PRC have been limited in number and for a specific family purpose no longer extant.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In view of Applicant's successful exercise of her citizenship responsibilities, her ties to the U.S., her approaching success in bringing her closest relative to the U.S., and applying the whole person concept, I find that she has mitigated the concerns under guideline B.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph I Guideline B: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge